

No. 10395

United States
Circuit Court of Appeals

For the Ninth Circuit. 6

PACIFIC AMERICAN FISHERIES, INC., a
corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

And

ALASKA PACIFIC SALMON COMPANY, a
corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Western District of Washington
Northern Division

FILED
MAY - 6 1943

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Federal Office Building, Seattle, Wash-
ington.

Attorneys for Defendant-Appellee.

In the District Court of the United States for the
Western District of Washington, Northern Division

No. 396

PACIFIC AMERICAN FISHERIES, INC.,
a corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR RECOVERY OF EXCESS
SOCIAL SECURITY TAXES

The plaintiff as its First Cause of Action against the defendant alleges:

I.

That at all times hereinafter mentioned plaintiff was and it now is a corporation organized and existing under the laws of the State of Delaware and duly qualified and authorized to do business in the State of Washington and in the Territory of Alaska; that plaintiff is a citizen of the United States and at all times it has borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said United States; that plaintiff is justly entitled to the amount herein claimed from the United States and that no assignment or transfer of said claim or any part thereof or any interest therein has been made; that plain-

tiff's principal office and place of business has been and is now at Bellingham in the Northern Division of the Western District of Washington.

II.

In the years 1937, 1938, and 1939 plaintiff was engaged in the business of catching and packing salmon. In conducting such business during the operating seasons of said years, it [1*] operated a number of canneries with necessary traps and floating equipment situated in remote or isolated locations in Southeastern Alaska, on Kodiak Island, along the Alaska Peninsula, and on Bristol Bay. Said canneries were operated only during the fishing season, covering a period of only a few weeks in the Bristol Bay area and not exceeding several months in the other districts depending upon the run of fish in the several districts in which said canneries were located. During the remainder of said years said canneries were closed down and for all practical purposes deserted except for a watchman left in charge of each.

To operate said canneries efficiently or at all, it was necessary that the plaintiff in advance of the fishing and operating season transport practically all its help from Bellingham and Seattle, Washington, and from Portland, Oregon, to its several Alaska canneries and return them to the several ports of embarkation at the end of the fishing and operating season. During the fishing and operating

* Page numbering appearing at foot of page of original certified Transcript of Record.

season, it was necessary that the plaintiff as a part of its operations furnish such employees with lodging and sustenance at the canneries at which they were employed, for otherwise no facilities for lodging and sustenance would have been available to them and it would have been impossible for plaintiff to have operated such canneries at all.

III.

During the fishing and operating season of 1937 the plaintiff so transported to and employed in its said Alaska canneries numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. On October 30, 1937, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington, its return [2] covering its 1937 operations, which return showed \$748,725.11 paid in cash for wages and \$140,954.50 as the estimated value of lodging and sustenance furnished to its Alaska employees during that season. A tax computed upon the aggregate of said two amounts (\$889,679.61) was paid to the Collector of Internal Revenue at Tacoma, Washington by the plaintiff on October 30, 1937, in the sum of \$8,896.80, which payment included \$1,409.54, being 1% of said sum of \$140,954.50, the estimated value of such lodging and sustenance. Said sum of \$1,409.54 was paid in error in that the said estimated value of lodging and sustenance upon which that sum was computed and paid as a tax was not wages nor taxable as wages; that on April 2, 1938, the plaintiff duly filed its claim with the said Collector of Internal Revenue to whom said excess

taxes were paid for the refund of the same and said claim was rejected in its entirety by the Commissioner of Internal Revenue on July 11, 1939; that said sum of \$1,409.54 with 6% interest thereon from said date of payment is justly owing to the plaintiff.

Second Cause of Action

As a second cause of action the plaintiff repeats paragraphs I and II of the foregoing first cause of action, and in addition thereto alleges that on November 18, 1939, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington a supplemental return covering certain additional Alaska employees not included in the return described in the foregoing first cause of action. Said supplemental return showed \$474,142.71 paid in cash for wages and \$26,905 as the estimated value of lodging and sustenance furnished the plaintiff's 1937 Alaska employees covered by said supplemental return. A tax computed upon the aggregate of said two amounts (\$501,047.71) [3] was paid to the Collector of Internal Revenue at Tacoma by the plaintiff on November 18, 1939, in the sum of \$5,010.48, which payment included \$269.05, being 1% of said sum of \$26,905, the estimated value of such lodging and sustenance. Said sum of \$269.05 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages; that on November 8, 1940, the plaintiff duly filed its claim with the said Collector of Internal Revenue to whom said excess taxes were paid for the refund of the same, and said claim was re-

jected in its entirety by the Commissioner of Internal Revenue on December 20, 1940; that said sum of \$269.05 with 6% interest thereon from said date of payment is justly owing to the plaintiff.

Third Cause of Action

As a third cause of action the plaintiff repeats paragraphs I and II of the foregoing first cause of action, and in addition thereto alleges that during the fishing and operating season of 1938, the plaintiff so transported to and employed in its said Alaska canneries numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. On October 29, 1938, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington its return covering its 1938 operations, which return showed \$1,273,897.82 paid in cash for wages and \$141,756.92 as the estimated value of lodging and sustenance furnished to its Alaska employees during that season. A tax computed upon the aggregate of said two amounts (\$1,415,654.75) was paid to the Collector of Internal Revenue at Tacoma, Washington by the plaintiff on October 29, 1938, in the sum of \$14,156.55, which payment included \$1,417.57, being 1% of said sum of \$141,756.92, [4] the estimated value of such lodging and sustenance. Said sum of \$1417.57 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages; that on November 8, 1940, the plaintiff filed its claim with the said Collector of Internal Revenue to whom said

excess taxes were paid for the refund of the same, and said claim was rejected in its entirety by the Commissioner of Internal Revenue on December 20, 1940; that said sum of \$1417.57 with 6% interest thereon from said date of payment is justly owing to the plaintiff.

Fourth Cause of Action

As a fourth cause of action the plaintiff repeats paragraphs I and II of the foregoing first cause of action, and in addition thereto alleges that after the filing of the return and the payment of the taxes described in the foregoing third cause of action, the plaintiff on March 1, 1939, filed with the Collector of Internal Revenue at Tacoma, Washington a further return covering certain of its operations during the quarter ending December 31, 1938, which return showed \$79,513.31 paid in cash for wages and \$5,725.82 as the estimated value of lodging and sustenance furnished its Alaska employees covered by such return. A tax computed upon the aggregate of said two amounts (\$85,239.13) was paid to the Collector of Internal Revenue at Tacoma, Washington by the plaintiff on March 1, 1939, in the sum of \$852.39, which payment included \$57.26, being 1% of said sum of \$5,725.82, the estimated value of such lodging and sustenance. Said sum of \$57.26 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages; that on November 8, 1940, plaintiff duly filed its claim [5] with the said Collector of Internal Revenue to whom said excess taxes were

paid for refund of the same and said claim was rejected in its entirety by the Commissioner of Internal Revenue on December 20, 1940; that said sum of \$57.26 with 6% interest thereon from said date of payment is justly owing to the plaintiff.

Fifth Cause of Action

As a fifth cause of action the plaintiff repeats paragraphs I and II of the foregoing first cause of action, and in addition thereto alleges that during the fishing and operating season of 1939 the plaintiff so transported to and employed in its said Alaska canneries numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act, now known as "Federal Insurance Contributions Act." On November 18, 1939, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington its return covering its 1939 operations, which return showed \$960,115.75 paid in cash for wages and \$129,086.18 as the estimated value of lodging and sustenance furnished to its Alaska employees during that season. A tax computed upon the aggregate of said two amounts (\$1,089,201.93) was paid to the Collector of Internal Revenue at Tacoma, Washington on November 18, 1939, in the sum of \$10,892.02, which payment included \$1,290.86, being 1% of said sum of \$129,086.18, the estimated value of such lodging and sustenance. Said sum of \$1,290.86 was paid in error in that said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages; that on November 8, 1940, the plaintiff duly filed

its claim with the said Collector of Internal Revenue to whom said excess taxes were paid for the refund of the same and said claim was rejected in its entirety by the Commissioner of Internal [6] Revenue on December 20, 1940; that said sum of \$1,290.86 with 6% interest thereon from said date of payment is justly owing to the plaintiff.

Wherefore, plaintiff prays judgment against the defendant as follows:

On its first cause of action, in the sum of \$1,409.54, with interest thereon at the rate of 6% per annum from October 30, 1937, until paid.

On its second cause of action, in the sum of \$269.05, with interest thereon at the rate of 6% per annum from November 18, 1939, until paid.

On its third cause of action, in the sum of \$1417.57, with interest thereon at the rate of 6% per annum from October 29, 1938, until paid.

On its fourth cause of action, in the sum of \$57.26, with interest thereon at the rate of 6% per annum from March 1, 1939, until paid.

On its fifth cause of action, in the sum of \$1,290.86, with interest thereon at the rate of 6% per annum from November 18, 1939, until paid.

KERR, McCORD & CAREY
STEPHEN V. CAREY
J. L. COLLINS

Attorneys for plaintiff
1309 Hoge Bldg.
Seattle, Washington

[Endorsed]: Filed July 7, 1941. [7]

[Title of District Court and Cause.]

No. 396

ANSWER

Comes now the United States of America, defendant in the above entitled action, by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and Gerald Shucklin, Assistant United States Attorney for said District, and for answer to the complaint of the plaintiff on file herein, alleges as follows:

First Cause of Action

I.

The allegations of Paragraph I of plaintiff's complaint are admitted, except that it is denied that the "plaintiff is justly entitled to the amount herein claimed from the United States."

II.

The defendant has no information sufficient to form a belief concerning the allegations contained in Paragraph II of plaintiff's complaint, and therefore denies the same.

III.

The allegations of Paragraph III of plaintiff's complaint are admitted, except that part thereof which states that "said sum of \$1,409.54 was paid in error in that the [8] said estimated value of lodging and sustenance upon which that sum was computed and paid as a tax was not wages nor taxable as

wages", which is denied. Defendant avers that the amounts paid for lodging and sustenance were included within the provisions of Section 811 (a) of Title VIII of the Social Security Act as wages. It is further denied by the defendant that there is anything "justly owing to the plaintiff".

In answer to the Second, Third, Fourth and Fifth Causes of Action of the Plaintiff's Complaint herein, defendant admits the allegations therein contained, except that it denies that the amounts expended for lodging and sustenance were not wages. Defendant avers that the amounts so expended were wages within the meaning of Section 811 (a) of Title VIII of the Social Security Act.

Wherefore, defendant prays that judgment be entered for the defendant and against the plaintiff, and that the defendant recover its costs and disbursements herein.

J. CHARLES DENNIS

United States Attorney.

GERALD SHUCKLIN

Assistant United States
Attorney.

Received a copy of the within Answer this 24 day
of Oct., 1941.

KERR, McCORD & CAREY

(J.L.C.)

Attorney for Plaintiff

[[Endorsed]: Filed Nov. 24, 1941. [9]

[Title of District Court and Cause.]

No. 396

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause and cause No. 397, Alaska Pacific Salmon Company, a corporation, Plaintiff, v. United States of America, Defendant, were consolidated for trial and came on regularly for trial before the above-entitled court, John C. Bowen presiding therein, sitting without a jury, plaintiff in each cause appearing by their attorneys, Kerr, McCord & Carey, being represented in court by Stephen V. Carey, and the defendant, United States of America, appearing by its attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Harry Sager, Assistant United States Attorney for said District, being represented in court by Thomas R. Winter, Special Assistant to the Chief Counsel for the Bureau of Internal Revenue, and witnesses for the plaintiffs and defendant having been sworn and having testified, exhibits having been introduced in court, written memoranda having been filed by counsel for both parties, oral argument had therein, and the court having on September 26, 1942, announced his oral decision, and the court being fully advised, now makes the following:

FINDINGS OF FACT

I.

That at all times hereinafter mentioned plaintiff was [10] and is now a corporation organized and

existing under the laws of the State of Delaware and duly qualified and authorized to do business in the State of Washington and in the Territory of Alaska; that plaintiff is a citizen of the United States and at all times it has borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said United States; that plaintiff is the owner of the amount herein claimed from the United States and that no assignment or transfer of said claim or any part thereof or any interest therein has been made; that plaintiff's principal office and place of business has been and is now at Bellingham in the Northern Division of the Western District of Washington.

II.

In the years 1937, 1938, and 1939 plaintiff was engaged in the business of catching and packing salmon. In conducting such business during the operating seasons of said years, it operated a number of canneries with necessary traps and floating equipment situated in remote or isolated locations in Southeastern Alaska, on Kodiak Island, along the Alaska Peninsula, and on Bristol Bay. Said canneries were operated only during the fishing season, covering a period of only a few weeks in the Bristol Bay area and not exceeding several months in the other districts depending upon the run of fish in the several districts in which said canneries were located. During the remainder of said years said canneries were closed down and for all practical

purposes deserted except for a watchman left in charge of each.

To carry on said operations efficiently or at all, it was necessary that the plaintiff in advance of the fishing [11] and operating season transport most of its employees from Seattle, Washington or other places in the States to said places in Alaska and return them at the end of the fishing and operating season. During the fishing and operating season, it was necessary that the plaintiff, and it agreed that as part of its operations and in addition to cash was to furnish most of the employees with lodging and sustenance at their places of employment in Alaska, for otherwise no facilities for lodging and sustenance would have been available to them and it would have been impossible for the plaintiff to have carried on such operations at all, except that in cases where native Alaskan workers were employed and no lodging and sustenance furnished, additional cash wages were to be paid.

III.

During the fishing and operating season of 1937 the plaintiff so transported to and employed in its said Alaska canneries numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. On October 30, 1937, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington, its return covering its 1937 operations, which return showed \$748,725.11 paid in cash for wages and \$140,954.50 as the estimated value of lodging and sustenance furnished to its Alaska employees dur-

ing that season. A tax computed upon the aggregate of said two amounts (\$889,679.61) was paid to the Collector of Internal Revenue at Tacoma, Washington by the plaintiff on October 30, 1937, in the sum of \$8,896.80, which payment included \$1,409.54, being 1% of said sum of \$140,954.50, the estimated value of such lodging and sustenance. [12]

IV.

That on November 18, 1939, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington, a supplemental return covering certain additional Alaska employees not included in the return described in the foregoing first cause of action. Said supplemental return showed \$474,142.71 paid in cash for wages and \$26,905.00 as the estimated value of lodging and sustenance furnished the plaintiff's 1937 Alaska employees covered by said supplemental return. A tax computed upon the aggregate of said two amounts (\$501,047.71) was paid to the Collector of Internal Revenue at Tacoma by the plaintiff on November 18, 1939, in the sum of \$5,010.48, which payment included \$269.05, being 1% of said sum of \$26,905.00, the estimated value of such lodging and sustenance.

V.

That during the fishing and operating season of 1938, the plaintiff so transported to and employed in its said Alaska canneries numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. On October 29, 1938, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Wash-

ington, its return covering its 1938 operations, which return showed \$1,273,897.82 paid in cash for wages and \$141,756.92 as the estimated value of lodging and sustenance furnished to its Alaska employees during that season. A tax computed upon the aggregate of said two amounts (\$1,415,654.75) was paid to the Collector of Internal Revenue at Tacoma, Washington, by the plaintiff on October 29, 1938, in the sum of \$14,156.55, which payment included \$1,417.57, being 1% of said sum of \$141,756.92, the estimated value of such lodging and sustenance. [13]

VI.

That after the filing of the return and the payment of the taxes described in the foregoing Paragraph V, the plaintiff on March 1, 1939, filed with the Collector of Internal Revenue at Tacoma, Washington, a further return covering certain of its operations during the quarter ending December 31, 1938, which return showed \$79,513.31 paid in cash for wages and \$5,725.82 as the estimated value of lodging and sustenance furnished its Alaska employees covered by such return. A tax computed upon the aggregate of said two amounts (\$85,239.13) was paid to the Collector of Internal Revenue at Tacoma, Washington, by the plaintiff on March 1, 1939, in the sum of \$852.39, which payment included \$57.26, being 1% of said sum of \$5,725.82, the estimated value of such lodging and sustenance.

VII.

That during the fishing and operating season of 1939 the plaintiff so transported to and employed

in its said Alaska canneries numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act, now known as "Federal Insurance Contributions Act." On November 18, 1939, the plaintiff filed with the Collector of Internal Revenue at Tacoma, Washington, its return covering its 1939 operations, which return showed \$960,115.75 paid in cash for wages and \$129,086.18 as the estimated value of lodging and sustenance furnished to its Alaska employees during that season. A tax computed upon the aggregate of said two amounts (\$1,089,201.93) was paid to the Collector of Internal Revenue at Tacoma, Washington, on November 18, 1939, in the sum of \$10,892.02, which payment included \$1,290.86, being 1% of said sum of \$129,086.18, the estimated value of such [14] lodging and sustenance.

VIII.

That within the time provided by law, namely, on April 2, 1938, and November 8, 1940, the plaintiff duly filed its claims for refund for the years 1937, 1938 and 1939 with the Collector of Internal Revenue to whom said taxes were paid for the refunds of the same and that said claims were rejected and disallowed in their entirety by the Commissioner of Internal Revenue on July 11, 1939, and December 20, 1940, and this action was timely filed on July 8, 1941.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 13, 1942. Judson W. Shorett, Clerk. By E. M. Rosser, Deputy.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

That the value of lodging and sustenance furnished plaintiff's admitted employees constituted "wages" within the meaning of Section 811 (a) of the Social Security Act and as amended (Title 26 U. S. C. A., Sec. 1426 (a), Internal Revenue Code).

II.

That the taxes assessed and collected, refunds of which are sought in this action, were in all respects legal and in strict accordance with the law.

III.

That the judgment should be entered dismissing plaintiff's complaint with prejudice and with costs to be taxed by the Clerk.

Dated this 13th day of October, 1942.

/s/ JOHN C. BOWEN

United States District Judge

Copy received this 5th day of Oct., 1942

KERR, McCORD & CAREY

by SJT

Presented by

THOMAS R. WINTER

of Plaintiff's Counsel

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division, Oct. 5, 1942. Judson W. Shorett, Clerk.
By E. M. Rosser, Deputy.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 396

PACIFIC AMERICAN FISHERIES, INC., a cor-
poration,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above-entitled cause and cause No. 397, Alaska Pacific Salmon Company, a corporation, Plaintiff, v. United States of America, Defendant, were consolidated for trial and came on regularly for trial before the above-entitled court, John C. Bowen presiding therein, sitting without a jury, plaintiff in each cause appearing by their attorneys, Kerr, McCord & Carey, being represented in court by Stephen V. Carey, and the defendant, United States of America, appearing by its attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Harry Sager, Assistant United States Attorney for said District, being represented in court by Thomas R. Winter, Special

Assistant to the Chief Counsel for the Bureau of Internal Revenue, and witnesses for the plaintiffs and defendant having been sworn and having testified, exhibits having been introduced in court, written memoranda having been filed by counsel for both parties, oral argument had therein and the court having on September 26, 1942, announced his oral decision, and the court having made and entered Findings of Fact and Conclusions of Law herein, now therefore, it is hereby [16]

Ordered, Adjudged and Decreed that the Plaintiff's complaint be and the same is hereby dismissed with prejudice and with costs to be taxed by the Clerk.

Dated this 13th day of October, 1942.

/s/ JOHN C. BOWEN

Judge

Presented by:

THOMAS R. WINTER

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Oct. 31, 1942. Judson W. Shorett, Clerk. By E. M. Rosser, Deputy.

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division, Oct. 5, 1942. Judson W. Shorett, Clerk.

Copy received this 5 day of Oct. 1942

KERR, McCORD & CAREY

by SJT [17]

[Title of District Court and Cause.]

No. 396

NOTICE OF APPEAL

Notice is hereby given that Pacific American Fisheries, Inc., a corporation, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on October 13, 1942.

KERR, McCORD & CAREY
STEPHEN V. CAREY

Attorneys for Pacific American Fisheries, Inc., a corporation,
1309 Hoge Building
Seattle, Washington

(Notice of Appeal & Bond filed Jan. 9, 1943.)

[Endorsed]: Filed Jan. 9, 1943. [18]

[Title of District Court and Cause.]

No. 396

COST BOND ON APPEAL

Know All Men by These Presents That we, Pacific American Fisheries, Inc., a corporation, as principal, and United States Fidelity and Guaranty Company, a corporation, as surety, acknowledge ourselves to be jointly indebted to United States of America, appellee in the above cause, in the sum of \$250.00 conditioned that:

Whereas, on the 13th day of October, 1942, in the District Court of the United States for the Western District of Washington, Northern Division in the above entitled and numbered cause, a judgment was entered in favor of the defendant dismissing the plaintiff's complaint with prejudice and with costs against plaintiff, and;

Whereas the plaintiff has filed in the office of the clerk of the said District Court a notice of appeal to United States Circuit Court of Appeals for the Ninth Circuit;

Now the condition of the above obligation is such that if the said Pacific Fisheries, Inc., a corporation, shall prosecute its appeal to effect and answer all costs if [19] the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then the above obligation is void else to remain in full force and effect.

PACIFIC AMERICAN FISH-
ERIES, INC., a corporation

By J. A. GREEN

Vice-President

Attest:

by PHILIP D. MACBRIDE

Chairman Executive Com-
mittee

UNITED STATES FIDELITY
AND GUARANTY COM-
PANY, a corporation

By JOHN C. M. McCALLISTER

Its Attorney in Fact.

[Endorsed]: Filed Jan. 9, 1943. [20]

[Title of District Court and Cause.]

No. 396

ORDER EXTENDING TIME TO
DOCKET APPEAL

It is ordered that the time within which to docket the record on appeal is hereby extended to and including April 1, 1943.

Done in open court this 9th day of February, 1943.

JOHN C. BOWEN

United States District Judge

Presented by:

S. V. CAREY

Attorney for Plaintiff

Approved:

THOMAS R. WINTER

Attorney for Defendant

[Endorsed]: Filed Feb. 9, 1943. [21]

In the District Court of the United States
For the Western District of Washington
Northern Division

No. 397

ALASKA PACIFIC SALMON COMPANY, a
corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR RECOVERY OF EXCESS
SOCIAL SECURITY TAXES

The plaintiff as its First Cause of Action against the defendant alleges:

I.

That at all times hereinafter mentioned plaintiff was and it now is a corporation organized and existing under the laws of the State of Nevada and duly qualified and authorized to do business in the State of Washington and in the Territory of Alaska; that plaintiff is a citizen of the United States and at all times it has borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said United States; that plaintiff is justly entitled to the amount herein claimed from the United States and that no assignment or transfer of said claim or any part thereof or any interest therein has been made; that plaintiff's

principal office and place of business has been and it is now at Seattle in the Northern Division of the Western District of Washington.

II.

That in the years 1937, 1938, and 1939 plaintiff was engaged in the business of catching and packing salmon in the [22] Territory of Alaska. In conducting such a business during the operating seasons of said years, it operated a number of canneries with necessary traps and floating equipment situated in remote or isolated locations in Alaska. In the year 1937, it operated a number of fish traps at Drier Bay on Prince William Sound, and canneries at Kake, Ketchikan, Port Althorp, and Rose Inlet in Southeastern Alaska, and a cannery at Sand Point in the Shumigan Islands. The said five canneries were operated during the succeeding seasons of 1938 and 1939. Said operations were carried on only during the fishing season, not exceeding several months in each year, depending upon the run of fish in the several fishing districts. During the remainder of said years, said operations were closed down, the canneries for all practical purposes being deserted except for a watchman left in charge of each.

To carry on said operations efficiently or at all, it was necessary that the plaintiff in advance of the fishing and operating season transport its employees from Seattle, Washington to said places in Alaska and return them to Seattle at the end of the fishing and operating season. During the fishing and op-

erating season, it was necessary that the plaintiff as part of its operations furnish such employes with lodging and sustenance at their places of employment in Alaska, for otherwise no facilities for lodging and sustenance would have been available to them and it would have been impossible for the plaintiff to have carried on such operations at all.

III.

During the fishing and operating season of 1937, the plaintiff so transported to and employed in Alaska numerous workmen on account of which employment it became obligated to pay [23] taxes under Title VIII of the Social Security Act. Between various dates from February 15, 1937, to January 28, 1938 (both dates inclusive), the plaintiff forwarded to the Collector of Internal Revenue at Tacoma, Washington its checks aggregating \$9,882.31 in payment of installments of Social Security Taxes accruing on account of its 1937 operations. Said checks were received, endorsed, and cashed by said Collector of Internal Revenue on the following dates, in the following amounts:

March 1, 1937	\$ 277.93
March 31, 1937	297.07
May 3, 1937	358.92
June 3, 1937	515.79
July 7, 1937	912.25
August 4, 1937	946.39
September 1, 1937	870.40
October 1, 1937	3,046.71
October 29, 1937	1,892.96

November 29, 1937	228.87
December 31, 1937	235.29
February 3, 1938	299.73
<hr/>	
Total	\$9,882.31

The said aggregate sum of \$9,882.31 so paid in installments included the employer's contribution in the sum of \$4,939.83 and the employee's contribution in the sum of \$4,942.48. The employer's contribution of \$4,939.83 was computed upon a total sum of \$493,983.14 of which total sum \$431,816.44 was wages paid in cash to such employees and the balance, \$62,166.70, was the estimated value of lodging and sustenance furnished such employees. Included in the sum of \$4,939.83 paid as employer's tax was the sum of \$621.67, being 1% of said \$62,166.70, the estimated value of such lodging and sustenance. Said sum of \$621.67 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages; that within the time provided by law, namely, on April 8, 1938, the plaintiff duly filed its claim with said Collector of Internal Revenue to whom said excess taxes were paid [24] for the refund of the same and the said claim was rejected in its entirety by the Commissioner of Internal Revenue on July 11, 1939; that said sum of \$621.67 with 6% interest thereon from the several dates of payment is justly owing to the plaintiff.

Second Cause of Action

As a second cause of action, the plaintiff repeats Paragraph I and II of the foregoing first cause of action and in addition thereto alleges that during the fishing and operating season of 1938 the plaintiff so transported to and employed in Alaska numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. Between April 29, 1938, and January 27, 1939, the plaintiff forwarded to the Collector of Internal Revenue at Tacoma, Washington its checks in payment of installments of Social Security Taxes accruing on account of its 1938 operations, which checks were received, endorsed, and cashed by said Collector of Internal Revenue and included the following payments on account of the employer's contributions, namely:

April 29, 1938	\$ 366.97
July 29, 1938	1,099.39
October 31, 1938	3,070.46
January 27, 1939	294.95
<hr/>	
Total	\$4,831.77

The said aggregate sum of \$4,831.77 so paid as employer's tax was computed upon a total sum of \$483,177.06 of which total sum \$423,631.74 was paid in cash to such employees and the balance, \$59,545.32, was the estimated value of lodging and sustenance furnished such employees. Included in the sum of \$4,831.77 paid as employer's tax was the sum of \$595.45, being 1% of said \$59,545.32, the

estimated value of such lodging and sustenance. Said sum of \$595.45 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed [25] and paid as a tax was not wages nor taxable as wages; that within the time provided by law, namely, on November 8, 1940, the plaintiff duly filed its claim with said Collector of Internal Revenue, to whom said excess taxes were paid, for refund of the same and said claim was rejected in its entirety by the Commissioner of Internal Revenue on December 20, 1930; that said sum of \$595.45 with 6% interest thereon from the several dates of payment is justly owing to the plaintiff.

Third Cause of Action

As a third cause of action, the plaintiff repeats Paragraphs I and II of the foregoing first cause of action and in addition thereto alleges that during the fishing and operating season of 1939 the plaintiff so transported to and employed in Alaska numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. Between April 27, 1939, and January 30, 1940, the plaintiff forwarded to the Collector of Internal Revenue at Tacoma, Washington its checks in payment of installments of Social Security Taxes accruing on account of its 1939 operations, which checks were received, endorsed, and cashed by said Collector of Internal Revenue and included the following payments on account of the employer's contributions, namely:

April 27, 1939	\$ 376.40
July 28, 1939	1,201.70
October 30, 1939	3,358.59
January 30, 1940	232.19
<hr/>	
Total	\$5,168.88

The said aggregate sum of \$5,168.88 so paid as employer's tax was computed upon a total sum of \$516,888.80 of which total sum \$459,530.82 was paid in cash to such employees and the balance, \$57,357.98, was the estimated value of lodging and sustenance furnished such employees. Included in the sum of \$5,168.88 paid [26] as employer's tax, was the sum of \$573.58, being 1% of said \$57,357.98. Said sum of \$573.58 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages; that within the time provided by law, namely, on November 8, 1940, the plaintiff duly filed its claim with said Collector of Internal Revenue, to whom said excess taxes were paid, for the refund of the same and the said claim was rejected in its entirety by the Commissioner of Internal Revenue on December 20, 1940; that said sum of \$573.58 with 6% interest thereon from the several dates of payment is justly owing to the plaintiff.

Wherefore, plaintiff prays judgment against the defendant as follows:

On its first cause of action, in the sum of \$621.67 with interest thereon at the rate of 6% per

annum from the dates of the several installment payments made on account of the year 1937.

On its second cause of action, in the sum of \$595.45 with interest thereon at the rate of 6% per annum from the dates of the several installment payments made on account of the year 1938.

On its third cause of action, in the sum of \$573.58 with interest thereon at the rate of 6% per annum from the dates of the several installment payments made on account of the year 1939.

KERR, McCORD & CAREY

STEPHEN V. CAREY

J. L. COLLINS

Attorneys for Plaintiff

1309 Hoge Bldg.

Seattle, Washington

[Endorsed]: Filed July 8, 1941. [27]

[Title of District Court and Cause.]

No. 397

ANSWER

Comes now the United States of America, defendant in the above entitled action, by and through J. Charles Dennis, United States Attorney for the Western District of Washington, and Gerald Shucklin, Assistant United States Attorney for said District, and for answer to the complaint of the plaintiff on file herein, alleges as follows:

First Cause of Action

I.

The allegations of Paragraph I of plaintiff's complaint are admitted, except that it is denied that "plaintiff is justly entitled to the amount herein claimed from the United States."

II.

Defendant has no information from which to form a belief as to the allegations contained in paragraph II of plaintiff's complaint, and therefore denies the same.

III.

The allegations of paragraph III of plaintiff's complaint are admitted, except as to the allegation that "Said sum of \$621.67 was paid in error in that the said estimated value of lodging and sustenance upon which said [28] sum was computed and paid as a tax was not wages nor taxable as wages," which is denied. The defendant avers that the sum paid out for so-called lodging and sustenance is included within the meaning of Section 811 (a), Title VIII of the Social Security Act as wages. In accordance with the provisions of that Section the plaintiff is required to pay Social Security taxes thereon for all remuneration or wages paid to its employees. It is also denied that the sum of \$621.67, with six per cent interest thereon "is justly owing to the plaintiff."

Second Cause of Action

In answer to the plaintiff's second cause of action,

defendant's answer to paragraphs I and II of the First Cause of Action are hereby incorporated by reference and made a part hereof as though set forth in full. As there answered or modified, the allegations of the second cause of action are admitted, except that it is denied that there is anything "justly owing to the plaintiff."

Third Cause of Action

In answer to the plaintiff's Third Cause of Action, defendant's answer to Paragraphs I and II of the First Cause of Action are hereby incorporated by reference and made a part hereof as though set forth in full. The remainder of the allegations of this cause of action are admitted, except that it is denied that the "sum of \$573.58 was paid in error in that the said estimated value of lodging and sustenance upon which said sum was computed and paid as a tax was not wages nor taxable as wages." The defendant avers that the sum paid for lodging and sustenance is included within the statute (Section 811 (a), [29] Title VIII, of the Social Security Act), and upon which a tax was legally owing and paid. It is further denied that in paying the sum of \$573.58, with six per cent interest thereon, there is now any money "justly owing to the plaintiff" by reason thereof.

Wherefore, defendant prays that judgment be entered for the defendant and against the plaintiff, and that the defendant recover its costs and disbursements herein.

J. CHARLES DENNIS

United States Attorney

GERALD SHUCKLIN

Assistant United States
Attorney.

Received a copy of the within Answer this 24 day of Oct., 1941.

KERR, McCORD & CAREY

(J. L. C.)

Attorney for Plaintiff

[Endorsed]: Filed Nov. 24, 1941. [30]

[Title of District Court and Cause.]

No. 397

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause and cause No. 396, Pacific American Fisheries, Inc., a corporation, Plaintiff, v. United States of America, Defendant, were consolidated for trial and came on regularly for trial before the above-entitled court, John C. Bowen presiding therein, sitting without a jury, plaintiff in each cause appearing by their attorneys, Kerr, McCord & Carey, being represented in court by

Stephen V. Carey, and the defendant, United States of America, appearing by its attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Harry Sager, Assistant United States Attorney for said District, being represented in court by Thomas R. Winter, Special Assistant to the Chief Counsel for the Bureau of Internal Revenue, and witnesses for the plaintiffs and defendant having been sworn and having testified, exhibits having been introduced in court, written memoranda having been filed by counsel for both parties, oral argument had therein, and the court having, on September 26, 1942, announced his oral decision, and the court being fully advised, now makes the following: [31]

FINDINGS OF FACT

I.

That at all times hereinafter mentioned plaintiff was and now is a corporation organized and existing under the laws of the State of Nevada and duly qualified and authorized to do business in the State of Washington and in the Territory of Alaska; that plaintiff is a citizen of the United States and at all times it has borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said United States; that plaintiff is the owner of the amount herein claimed from the United States and that no assignment or transfer of said claim or any part thereof or any interest therein has been made; that plaintiff's princi-

pal office and place of business has been and it is now at Seattle in the Northern Division of the Western District of Washington.

II.

That in the years 1937, 1938 and 1939 plaintiff was engaged in the business of catching and packing salmon in the territory of Alaska. In conducting such a business during the operating seasons of said years, it operated a number of canneries with necessary traps and floating equipment situated in remote or isolated locations in Alaska. In the year 1937, it operated a number of fish traps at Drier Bay on Prince William Sound, and canneries at Kake, Ketchikan, Port Althorp, and Rose Inlet in Southeastern Alaska, and a cannery at Sand Point in the Shumigan Islands. The said five canneries were operated during the succeeding seasons of 1938 and 1939. Said operations were carried on only during the fishing season, not exceeding several months in [32] each year, depending upon the run of fish in the several fishing districts. During the remainder of said years, said operations were closed down, the canneries for all practical purposes being deserted except for a watchman left in charge of each.

To carry on said operations efficiently or at all, it was necessary that the plaintiff in advance of the fishing and operating season transport most of its employees from Seattle, Washington, or other places in the States to said places in Alaska and return them at the end of the fishing and operating season.

During the fishing and operating season, it was necessary that the plaintiff, and it agreed that as part of its operations and in addition to cash was to furnish most of the employees with lodging and sustenance at their places of employment in Alaska, for otherwise no facilities for lodging and sustenance would have been available to them and it would have been impossible for the plaintiff to have carried on such operations at all, except that in cases where native Alaskan workers were employed and no lodging and sustenance furnished, additional cash wages were to be paid.

III.

During the fishing and operating season of 1937, the plaintiff so transported to and employed in Alaska numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. Between various dates from February 15, 1937, to January 28, 1938 (both dates inclusive), the plaintiff forwarded to the Collector of Internal Revenue at Tacoma, Washington, its checks aggregating \$9,852.31 in payment of installments of Social Security taxes accruing on account of its 1937 operations. Said checks were received, endorsed, and cashed [32a] by said Collector of Internal Revenue on the following dates, in the following amounts:

March 1, 1937	\$ 277.93
March 31, 1937	297.07
May 3, 1937	358.92
June 3, 1937	515.79

July 7, 1937	912.25
August 4, 1937	946.39
September 1, 1937	870.40
October 1, 1937	5,046.71
October 29, 1937	1,892.96
November 29, 1937	228.87
December 31, 1937	235.29
February 3, 1938	299.73
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Total	\$9,882.31

The said aggregate sum of \$9,882.31 so paid in installments included the employer's contribution in the sum of \$4,939.83 and the employee's contribution, \$4,942.48. The employer's contribution of \$4,939.83 was computed upon a total sum of \$493,983.14 of which total sum \$431,816.44 was wages paid in cash to such employees and the balance \$62,166.70, was the estimated value of lodging and sustenance furnished such employees. Included in the sum of \$4,939.83 paid as employer's tax was the sum of \$621.67, being 1% of said \$62,166.70, the estimated value of such lodging and sustenance.

IV.

That during the fishing and operating season of 1938 the plaintiff so transported to and employed in Alaska numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. Between April 29, 1938, and January 27, 1939, the plaintiff forwarded to the Collector of Internal Revenue at Tacoma, Washington its checks in payment of

installments of Social Security Taxes accruing on account of its 1938 operations, which checks were received, endorsed, and cashed by said Collector of Internal Revenue and included the following payments on account of the employer's contributions, namely:

April 29, 1938	\$ 366.97
July 29, 1938	1,099.39
October 31, 1938	3,070.46
January 27, 1939	294.25
<hr/>	
Total	\$4,831.77

The said aggregate sum of \$4,831.77 so paid as employer's tax was computed upon a total sum of \$483,177.06 of which total sum \$423,631.74 was paid in cash to such employees and the balance, \$59,545.32, was the estimated value of lodging and sustenance furnished such employees. Included in the sum of \$4,831.77 paid as employer's tax was the sum of \$595.45, being 1% of said \$59,545.32, the estimated value of such lodging and sustenance.

V.

That during the fishing and operating season of 1939 the plaintiff so transported to and employed in Alaska numerous workmen on account of which employment it became obligated to pay taxes under Title VIII of the Social Security Act. Between April 27, 1939, and January 30, 1940, the plaintiff forwarded to the Collector of Internal Revenue at Tacoma, Washington its checks in payment of installments of Social Security taxes accruing on ac-

count of its 1939 operations, which checks were received, endorsed, and cashed by said Collector of Internal Revenue and included the following payments on account of the employer's contributions, namely:

April 27, 1939	\$ 376.40
July 28, 1939	1,201.70
October 30, 1939	3,358.59
January 30, 1940	232.19
<hr/>	
Total	\$5,168.88

The said aggregate sum of \$5,168.88 so paid as employer's [34] tax was computed upon a total sum of \$516,888.80 of which total sum \$459,530.82 was paid in cash to such employees and the balance, \$57,357.98, was the estimated value of lodging and sustenance furnished such employees. Included in the sum of \$5,168.88 paid as employer's tax, was the sum of \$573.58, being 1% of said \$57,357.98.

VI.

That within the time provided by law, namely, on April 2, 1938, and November 8, 1940, the plaintiff duly filed its claims for refund for the years 1937, 1938 and 1939 with the Collector of Internal Revenue to whom said taxes were paid for the refunds of the same and that said claims were rejected and disallowed in their entirety by the Commissioner of Internal Revenue on July 11, 1939, and December 20, 1940, and this action was timely filed on July 8, 1941.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

That the value of lodging and sustenance furnished plaintiff's admitted employees constituted "wages" within the meaning of Section 811 (a) of the Social Security Act and as amended (Title 26 U. S. C. A., Sec. 1426 (a), Internal Revenue Code.)

II.

That the taxes assessed and collected, refunds of which are sought in this action, were in all respects legal and in strict accordance with the law.

III.

That the judgment should be entered dismissing plain- [35] tiff's complaint with prejudice and with costs to be taxed by the Clerk.

Dated this 13th day of October, 1942.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented by

THOMAS R. WINTER,

Atty. for Def.

Copy received this 5th day of Oct., 1942.

KERR, McCORD & CAREY,

By A. M. U.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Oct. 13, 1942. Judson W. Shorett, Clerk. By E. M. Rosser, Deputy.

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division, Oct. 5, 1942. Judson W. Shorett, Clerk. By E. M. Rosser, Deputy. [36]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 397

ALASKA PACIFIC SALMON COMPANY, a
corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above-entitled cause and cause No. 396, Pacific American Fisheries, Inc., a corporation, Plaintiff, v. United States of America, Defendant, were consolidated for trial and came on regularly for trial before the above-entitled court, John C. Bowen presiding therein, sitting without a jury, plaintiff in each cause appearing by their attorneys, Kerr, McCord & Carey, being represented in court by Stephen V. Carey, and the defendant, United States of America, appearing by its attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Harry Sager, Assistant

United States Attorney for said District, being represented in court by Thomas R. Winter, Special Assistant to the Chief Counsel for the Bureau of Internal Revenue, and witnesses for the plaintiffs and defendant having been sworn and having testified, exhibits having been introduced in court, written memoranda having been filed by counsel for both parties, oral argument had therein, and the court having, on September 26, 1942, announced his oral decision, and the court having made and entered Findings of Fact and Conclusions of Law herein, now therefore, it is hereby [37]

Ordered, Adjudged and Decreed that the plaintiff's complaint be, and the same is hereby dismissed with prejudice and with costs to be taxed by the Clerk.

Dated this 13th day of October, 1942.

/s/ JOHN C. BOWEN,

Judge.

Presented by:

THOMAS R. WINTER,

Copy received this 5th day of Oct., 1942.

KERR, McCORD & CAREY,

By SJT. [38]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Oct. 13, 1942. Judson W. Shorett, Clerk. By E. M. Rosser, Deputy.

[Endorsed]: Lodged in the United States District Court, Western Division of Washington, Northern Division, Oct. 5, 1942. Judson W. Shorett, Clerk.

[Title of District Court and Cause.]

No. 397

NOTICE OF APPEAL

Notice is hereby given that Alaska Pacific Salmon Company, a corporation, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on October 13, 1942.

KERR, McCORD & CAREY,
STEPHEN V. CAREY,

Attorneys for Pacific American Fisheries, Inc., a
corporation, 1309 Hoge Building, Seattle,
Washington.

[Endorsed]: Filed Jan. 11, 1943. [39]

[Title of District Court and Cause.]

No. 397

COST BOND ON APPEAL

Know All Men by These Present that we, Alaska Pacific Salmon Company, a corporation, as principal, and American Surety Company of New York, a corporation, as Surety, acknowledge ourselves to be jointly indebted to United States of America, appellee in the above cause, in the sum of \$250.00 conditioned that:

Whereas, on the 13th day of October, 1942, in the District Court of the United States for the Western

District of Washington, Northern Division, in the above entitled and numbered cause, a judgment was entered in favor of the defendant dismissing the Plaintiff's complaint with prejudice and with costs against Plaintiff, and;

Whereas the Plaintiff has filed in the office of the Clerk of the said District Court a notice of appeal to United States Circuit Court of Appeals for the Ninth Circuit;

Now the condition of the above obligation is such that if the said Alaska Pacific Salmon Company, a corporation, shall prosecute its appeal to effect and answer all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may if the judgment is modified, then the above obligation is void else to remain in full force and effect.

[Seal] ALASKA PACIFIC SALMON
 COMPANY, a corporation,
By VICTOR EFENDAHL,
 Vice President.
Attest: LOUIS L. STEADMAN,
 Secretary.

[Seal] AMERICAN SURETY COM-
 PANY OF NEW YORK,
By S. H. MELROSE,
 Resident Vice President.
Attest: B. L. LEASURE,
 Resident Asst. Secretary.

[Endorsed]: Filed Jan. 11, 1943. [40]

[Title of District Court and Cause.]

No. 397

ORDER EXTENDING TIME TO
DOCKET APPEAL

It is ordered that the time within which to docket the record on appeal is hereby extended to and including April 1, 1943.

Done in open court this 9th day of February, 1943.

JOHN C. BOWEN,
United States District Judge.

Presented by:

S. V. CAREY,
Attorney for Plaintiff.

Approved:

THOMAS R. WINTER,
Attorney for Defendant.

[Endorsed]: Filed Feb. 9, 1943. [41]

United States District Court, Western District of
Washington, Northern Division

No. 396

PACIFIC AMERICAN FISHERIES, INC., a
corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

and

No. 397

ALASKA PACIFIC SALMON COMPANY, a
corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION FOR RECORD ON APPEAL

Whereas the above entitled actions were tried together and involve only the same controlling questions of law and fact, it is stipulated that they be heard together on appeal on the same record consisting of the following:

In Pacific American Fisheries, Inc., a Corporation,
vs. United States of America, No. 396

1. Complaint.
2. Answer.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Notice of Appeal.
6. Cost Bond on Appeal.
7. Order Extending Time to Docket Appeal.

[42]

In Alaska Pacific Salmon Company, a Corporation,
vs. United States of America, No. 397.

8. Complaint.
9. Answer.
10. Findings of Fact and Conclusions of Law.
11. Judgment.
12. Notice of Appeal.
13. Cost Bond on Appeal.
14. Order Extending Time to Docket Appeal.

In Cases Nos. 396 and 397 as Consolidated:

15. Transcript of proceedings as prepared by E. E. Lescher, court reporter, consisting of oral evidence of Russell Mowry and Fred W. Tegtmeyer, witnesses called by plaintiffs, and oral evidence of August Buschmann, William Hecker and Conrad Espe, witnesses called by defendant, with stipulation attached to said transcript relative to material parts of labor contracts introduced in evidence as exhibits by counsel for defendant.

16. This stipulation.

Dated at Seattle, Washington this 22nd day of March, 1943.

KERR, McCORD & CAREY,
STEPHEN V. CAREY,

Attorneys for Plaintiffs.

J. CHARLES DENNIS,
THOMAS R. WINTER,

Attorneys for Defendant.

[Endorsed]: Filed Mar. 23, 1943. [43]

[Title of District Court Causes.]

Nos. 396 and 397

Consolidated for Appeal

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of the consolidated record on appeal, consisting of pages numbered from 1 to 43, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing causes as is required by Stipulation for Record on Appeal of counsel, filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, except as to the reporter's tran-

script of proceedings, filed March 23, 1943, the original of which is enclosed herewith as part of the record on appeal in these causes, consolidated for appeal, and that the same constitute the record on appeal herein from the judgment of the United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, and certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

(Clerk's fees, Act of Feb. 11, 1925) for	
making record, certificate of re-	
turn, 106 folios @ \$.05 per folio....	\$ 5.30
Appeal fee, \$5.00 each case.....	10.00
Certificate of Clerk to Transcript of	
Record on Appeal50
	<hr/>
Total	\$15.80

[44]

I further certify that the foregoing fees have been paid by attorneys for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 25th day of March, 1943.

[Seal]

JUDSON W. SHORETT,
Clerk.

By E. REDMAYNE,
Deputy.

[Title of District Court and Causes.]

TESTIMONY

Be It Remembered that on, to-wit: July 8, 1942, at the hour of 10:00 o'clock a.m., the above-entitled and numbered causes of action, consolidated for purposes of trial, came on regularly for hearing in the above-entitled court before the Honorable John C. Bowen, District Judge, sitting without a jury.

The plaintiffs appearing by Stephen V. Carey, Esq. (of Messrs. Kerr, McCord & Carey) their attorneys and counsel;

The Defendant appearing by Thomas R. Winter, Esq., Chief Counsel Treasury, its attorney and counsel.

Thereupon, the following proceedings were had, and testimony given, to-wit:

The Court: These two cases are being consolidated for [2*] trial. Are the parties and counsel ready to proceed with the trial?

Mr. Winter: Yes, your Honor. The defendant is ready. In that connection, your Honor, may I ask to have associated as amicus curiae counsel, Mr. Griffin, representing the Alaska Fishermen's Union?

The Court: Is there any objection?

Mr. Carey: Yes, there is. I do not know of any interest that the Alaska Fishermen's Union has in this matter. If the Alaska Fishermen's Union has an interest, they should not be represented here

*Page numbering appearing at foot of page of original Reporter's Transcript.

as *amicus curiae*. They should be represented by way of intervention. I do not know what interest they claim to have. I can guess at it, though. The fact of the matter is that these cases were started, it happens, just one year ago—July 8th. Within a very few days after the filing of the complaint, Mr. Gershon called me, stating that he was representing the Alaska Fishermen's Union, indicating that he had, or might have some interest in this matter, and I either furnished him with copies of the complaints, or gave him copies of my complaints and permitted him to copy them. I have forgotten which, but it doesn't make any difference, anyway. And since that time I have heard nothing from Mr. Gershon until this very moment.

Now, if the Alaska Fishermen's Union have any interest in this matter, they have had a full year to intervene and file whatever would be proper pleadings in the case, in order to let us know what their position is and what the issues of fact are to be tried out, if there are any between ourselves and the union. They have [3] had knowledge of it for a year, and have done nothing, and they therefore have no right to be heard as *amicus curiae*. They might have had a right to intervene if the application had been made timely. We are prepared to try our case against the Government. We are not prepared to try our case against anybody else.

Mr. Winter: The only interest that the Alaska Fishermen's Union have in this is that they are

the bargaining agent for the employees vitally concerned with sustaining the position of the Commissioner in this case, and that is that wages—not only the basic pay of wages but the reasonable value of compensation in the form of board and lodging should be included in their Social Security Tax, and they merely ask to appear here as *amicus curiae* to aid the court in setting forth, or attempting to be an aid to the court in determining whether or not it has been considered by the employees, as well as the employers, that the reasonable value of the board and lodging should be included in the wages.

There is no issue here about the reasonableness of the amount which has been included. That is a matter which has been computed by the employers themselves.

The Court: Is that a point which the Government has had in mind and worked on with you right along in this case?

Mr. Griffin: No.

Mr. Winter: No. The Government only has an interest in construing the tax laws enacted by Congress. Of course, we welcome the actual facts from the employers as well as from the employees in the matter, as they may be of some [4] aid to the Court. Now, it seems to me that they might appear as *amicus curiae* in the sense that they might want to take part in the briefing. I do not expect them to take an active part in the defense of the case. The Government is the defendant as to whether

or not these people erroneously paid the taxes under the Social Security Act.

Mr. Carey: In the end, it seems to me it is not what my opinion is, or what Mr. Winter's opinion is, or what the opinion of the Alaska Fishermen's Union is. The case here is to be determined upon the facts and ultimately rests on the opinion of the Court. As I said before, if they have any issue, and make the proper showing, I presume the Court would permit them to intervene——

Mr. Winter: (Interrupting) If the Court please, if there is any objection on the part of counsel, we won't insist upon it. Mr. Griffin may sit with me informally in the case.

The Court: Very well. In view of the statement by counsel, then, you may proceed. I take it that you withdraw the request to have him appear as *amicus curiae*.

Mr. Winter: Yes, we will withdraw the request.

The Court: Is there any objection to Mr. Winter having Mr. Griffin associated with him informally, the same as some other member of the Bar?

Mr. Carey: I have no objection to that.

The Court: Mr. Griffin, you may feel free to consult with Mr. Winter about the matter.

Mr. Carey: But I have this to say, however, that if any issue in any form by counsel will be injected on [5] behalf of the Alaska Fishermen's Union, I object to it——

Mr. Winter: (Interrupting) We are not raising any issue.

Mr. Carey: Now, pardon me. The Court asked me a question, and I am trying to answer it.

The Court: Just a minute, Mr. Winter.

Mr. Winter: Yes, your Honor.

Mr. Carey: If any contention on behalf of the Alaska Fishermen's Union is made, I will, of course, object, unless it is based upon some evidence properly introduced.

The Court: Of course, the Court will consider the questions as they arise in the case. You may proceed, then, gentlemen.

(Thereupon an opening statement of the plaintiffs' cases was made by Mr. Carey.)

PLAINTIFFS' CASES

Mr. Carey: I will call Mr. Mowry.

RUSSELL MOWRY

called as a witness on behalf of Plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carey:

Q. Will you please state your name?

Mr. Winter: We will object to the introduction of any testimony on the ground that the complaints do not state a cause of action, and move the Court to dismiss the cases.

(Thereupon argument was had upon the motion.) [6]

(Testimony of Russell Mowry.)

Mr. Winter: For the purpose of my motion, and only for the purpose of my motion, of course, I must concede that everything is true as alleged by the complaints. However, I do not think that there will be any serious discrepancy in the testimony in this matter.

The Court: Do you anticipate that there might be a situation arise where you would claim to have the right to have the pleadings amended to include something that is not obviously within the pleadings as now drawn?

Mr. Carey: I am not anticipating any such thing.

The Court: You believe that the proof will be within the issues as now framed?

Mr. Carey: I think so. There is nothing to the contrary now in my mind.

The Court: Well, as to the motion made, the ruling of the Court will be that the Court overrules the motion, with the right of the defendant to raise the same question in all appropriate ways in further proceedings of this case.

You may proceed.

Q. (Mr. Carey, continuing) Will you state your name, please? A. Russell Mowry.

Q. Mr. Mowry, were you sometime in the past connected in an official way with the Pacific American Fisheries, the plaintiff in Cause No. 396?

A. I was.

Q. And what was your position?

A. I was comptroller of the Pacific American

(Testimony of Russell Mowry.)

Fisheries for the period from 1938 through June 1, 1939.

Q. Nineteen hundred and when? [7]

A. 1938. Just a minute. I believe it was in 1937. In 1937, I was appointed as comptroller.

Q. In 1937 up to very recently?

A. Yes, sir.

Q. You were comptroller of the company then during the period of its operations of 1937, 1938 and 1939? A. That is right.

Q. As comptroller of the company, was it part of your official duties to familiarize yourself with the operations of the company at the various places in which it operated in Alaska? A. Yes.

Q. During those years, the actual operations so far as catching and packing fish were concerned, were carried on in Alaska?

A. That is right.

Q. They had no operations outside of Alaska?

A. No.

Q. Will you state where, in 1937, the Company for its own account carried on operations in Alaska?

A. At——

Mr. Carey: (Interrupting) Perhaps it would be more convenient, if counsel does not object, for me to ask that in the same order in which I gave them to your Honor in my opening statement.

Mr. Winter: There is no objection to that.

Mr. Carey: All right.

(Testimony of Russell Mowry.)

Q. (Mr. Carey, continuing) During the year 1937, did the Company operate at Alitak?

A. Yes. [8]

Q. Alitak is located where?

A. That is on the southwestern tip of Kodiak Island.

Q. During the year 1938, did the company operate at that same location? A. Yes, it did.

Q. And also during the year 1939?

A. Yes.

Q. During the year 1937 did the company operate at Kasaan? A. Yes.

Q. Kasaan is where?

A. Kasaan is about 30 miles west of Ketchikan.

Q. Did the company operate at that same location in 1938? A. Yes.

Q. Did it operate at Kasaan in 1939?

A. No.

Q. Did the Company operate at King Cove in 1937? A. Yes.

Q. The King Cove cannery is located where?

A. It is about 100 miles east of Dutch Harbor, and 250 miles west of Seward.

Q. West of Seward?

A. Yes, on the Alaska Peninsula, on the south side.

Q. Was the King Cove cannery operated in 1938? A. Yes.

Q. And in 1939? A. Yes.

(Testimony of Russell Mowry.)

Q. And did the company operate at Naknek on Bristol Bay in 1937? A. Yes.

Q. And did it operate in that location in 1938? [9]

A. Yes.

Q. And in 1939? A. That is right.

Q. Did the company operate at Nornek on Bristol Bay in 1937? A. Yes.

Q. Did it operate at that same location in 1938? A. Yes.

Q. And in 1939? A. No.

Q. No operation at Nornek—

A. (Interrupting) —not in 1939.

Q. Not in 1939? A. That is right.

Q. Did the company operate at Nushagek on Bristol Bay in 1937? A. Yes.

Q. In 1938? A. No.

Q. No operation at Nushagek in 1938?

A. That is right.

Q. Did it operate at Nushagek in 1939?

A. Yes.

Q. Did the company operate at Petersburg in 1937? A. Yes.

Q. And Petersburg is where?

A. Oh, it is north of Ketchikan about 60 miles, I would say.

Q. Well, it is in southeastern Alaska?

A. It is in southeastern Alaska, yes.

Q. Between Ketchikan and Juneau? [10]

A. Between Ketchikan and Juneau, yes.

Mr. Winter: That is the town of Petersburg?

(Testimony of Russell Mowry.)

Mr. Carey: Yes, the town of Petersburg.

Q. Did the company operate at Petersburg in 1938? A. Yes.

Q. In 1939? A. No.

Q. No operation in 1939 at Petersburg?

A. That is right.

Q. Did the company operate at Port Moller in 1937? A. Yes.

Q. And where is Port Moller?

A. Well, Port Moller is on the northwest side of the Alaska Peninsula, about 200 miles east of Dutch Harbor.

Q. Did the company operate at Port Moller in 1938? A. No.

Q. Did it operate at Port Moller in 1939?

A. Yes.

Q. And did the company operate at Shumagin in 1937? A. Yes.

Q. That operation is also known as the Squaw Harbor operation?

A. Yes, sir; that is right.

Q. And where is the Shumagin or Squaw Harbor operation located?

A. Why, it is in the Shumagin Islands, and it is about 50 miles east of the King Cove Cannery.

Q. Both of those are east of Yunanak Pass or Dutch Harbor? A. Yes.

Q. Did the company operate at Shumagin or Squaw Harbor in [11] 1938? A. Yes.

Q. And in 1939? A. Yes.

(Testimony of Russell Mowry.)

Q. Now, coming to the Alitak Cannery in particular, you say that that is located on the Southwestern end of Kodiak Island? A. Yes.

Q. What is there located at Alitak other than the cannery itself and the attendant operations there? A. There is nothing there.

Q. How large a cannery is that?

A. Oh, it is a cannery that could put up around 100,000 or 125,000 cases of salmon—a three-line cannery.

Q. As canneries go, is that a large or a small operation?

A. It is a little better than average.

Q. Now, these operations were carried on in all three years, 1937, 1938 and 1939?

A. Yes.

Q. Would the operations in one year be typical for the other two years? A. Yes, sir.

Q. So that if you would describe what was done in one year, that would apply to the other two years? A. That is right.

Q. How far is the Alitak Cannery distant from any settlement or established town or village?

A. Well, it is about 60 miles west of the town of Kodiak, and it is about—oh, probably 150 miles west of Seward. [12]

Q. The town of Kodiak is located on the other end, or the northeastern end of Kodiak Island?

A. Yes.

Q. Are there any means of communication by land between the two ends of the Island?

(Testimony of Russell Mowry.)

A. No.

Q. Any regular steamship service between the two? A. No.

Q. And how far would you say it was from Cordova?

A. It is about 150 miles, I think it is.

Q. Taking a representative year, approximately how many men are employed at the Alitak Cannery?

A. Oh, there are about 180 or 190.

Q. And do those men live permanently in Alaska, or do they come from somewhere else?

A. 90 per cent. of them would come from Seattle.

Q. And during what period of the year are they stationed at the cannery?

A. Well, they generally leave here maybe about the middle of April, the first bunch, and come back about the middle of September or the end of September.

Q. And do those dates that you have now mentioned measure the actual operating season for the cannery for each succeeding year?

A. Yes, sir.

Q. In 1937, how were the men from the outside—that is, men from the States, transported to and from the cannery?

A. Why, in 1937, the Pacific American Fisheries operated their own ocean-going vessels, and they were transported on our own ocean vessels. [13]

(Testimony of Russell Mowry.)

Q. Was that transportation furnished by the company to the men as part of the operation?

A. Yes.

Q. These men embarked where on the outward trip?

A. Either at Seattle or Bellingham.

Q. And were discharged where at the end of the season?

A. Either at Bellingham or Seattle.

Q. On the trip up and the trip back, were the men furnished with their food and lodging aboard the ship?

A. Yes.

Mr. Winter: I object to that. If the contract of employment was in writing, that would be the best evidence, and I understand that the contract with all of the members was in writing, was it not?

The Witness: Yes, sir.

Mr. Winter: Then I object to this. The contract is the best evidence.

The Court: Do you have the contract available?

Mr. Carey: I do not think that it is.

The Court: Is there any dispute between the parties as to the facts?

Mr. Carey: It seems needless to encumber the record with a lot of written documents.

The Court: Is there a serious dispute as to whether or not the answer to the question should be "yes" or "no"?

Mr. Winter: No, I think not, but I think if

(Testimony of Russell Mowry.)

this is furnished as part of the compensation according to the contract, we should have the contract.

Mr. Carey: I will agree, if counsel insists, to [14] furnish the contract later. I did not anticipate that a question would be raised concerning that.

The Court: Does that meet your objection, Mr. Winter? He would like to have the question answered, and he states that he will produce the contract for introduction in evidence later.

Mr. Winter: Well, he should produce it now. The question here is whether or not——

Mr. Carey: (Interrupting) Well, I will withdraw the question.

Q. (Mr. Carey, continuing) The fish packed at the Alitak Cannery are obtained from what sources?

A. Well, they are obtained from traps, gillnets and seines.

Q. What is the fact as to whether the operations at that cannery are carried on at definite certain hours daily or at irregular times?

A. Well, the packing is irregular during the height of the season. You never know when the seine boats are coming in, and you have to have the crews ready at practically the whole 24 hours to can fish.

Q. The men that are brought to the cannery are lodged and boused—are lodged and fed how?

(Testimony of Russell Mowry.)

A. They have bunkhouses for the different groups of men, and they have mess houses for the different groups, and all the men eat there.

Q. Well, who operates these mess houses and bunkhouses? A. The company does.

Q. And where are they located?

A. Right at the cannery.

Q. What is the reason the company operates its own mess [15] houses and bunkhouses at the cannery during the season?

A. It is part of the operating necessity, to have the men there and the meals there, so that the meals and the men can dovetail with the operation.

Q. Would it be possible to efficiently operate the cannery at that remote place under any different arrangement? A. No.

Q. Would it be possible to operate the cannery leaving the men to provide for their own board and lodging? A. No.

Q. At Alitak, what is the fact as to whether or not the company maintains medical service?

A. Well, the Company at Alitak has maintained a doctor there, due to the remoteness of the location.

Q. When you say "a doctor", do you mean a regularly licensed physician?

A. In most cases it was a regularly licensed physician.

Q. And what service does he render or perform?

A. Why, he is strictly the medical man and the

(Testimony of Russell Mowry.)

first aid man, taking care of the injured and sick people.

Q. What is the reason for maintaining a licensed physician at Alitak?

A. Well, you are isolated there from any other doctor. There is no other doctor around there, and no chance of getting any medical attention in there, and it is just a humane thing to do, and to protect your operation.

Q. That is what I meant, was it in relation to the efficiency of operation?

A. Oh, yes; fellows might get fish poisoning and you would have to take care of the them. [16]

Q. Is that more or less of a common thing?

A. In some canneries, sometimes it is.

Q. And occasionally they have accidents, more or less serious? A. Yes.

Q. Now, you say the operation as you have described it in 1937 would equally apply for the other two years? A. Yes, sir.

Q. At Alitak? A. Yes.

Q. Now, coming to the next cannery, at Kasaan, you said that that is located in southeastern Alaska?

A. That is right.

Q. And about how far distant from the nearest established settlement, or town or village?

A. About 30 miles.

Q. What is that nearest settlement?

A. Ketchikan.

Q. Would it be possible for the employees em-

(Testimony of Russell Mowry.)

ployed at that cannery during the fishing season to live at Ketchikan and work at the cannery?

A. No.

Q. How many men on an average are employed at Ketchikan during the season?

A. About 200.

Q. That is a relatively large operation?

A. Yes, sir.

Q. Does the length of the season at Kasaan, or at the southeastern Alaska points differ somewhat from the length of the season either at Bristol Bay or to the westward on [17] the Peninsula?

A. The season at Kasaan starts a little later than it does to the westward, but it closes a few days later.

Q. Generally, you get a different class of fish there, don't you? You get pinks in southeastern Alaska, do you not?

A. Yes, sir.

Q. Now, the majority of the men employed during the season at Kasaan are obtained from where?

A. From Seattle.

Q. And did you state what the normal season is at Kasaan?

A. Oh, from the—the extreme limits are from about the first of April to the end of September.

Q. Is board and lodging furnished at Kasaan during the operating season substantially in the same manner and for the same reasons that you have already described with reference to Alitak?

A. Yes.

(Testimony of Russell Mowry.)

Q. And what you have said about 1937 would apply equally in 1938 at Kasaan?

A. That is right.

Q. And you said that there was no operation in 1939 at Kasaan? A. That is right.

The Court: If there are any summarizations, you might like to make, such as obtain there with reference to any other canneries where the condition is similar to that described, you may so state.

Mr. Carey: I have given it some consideration, but I think this is the most expeditious way. [18]

The Court: If you can shorten it— —

Mr. Carey: (Interrupting) I will.

The Court: (Continuing) —by having it apply to another cannery, what he has said with reference to the one that he has been speaking of, why, that would save time.

Mr. Carey: I will do that. I have that in mind, and I think that I can bunch some of these up.

Q. (Mr. Carey, continuing) Are the hours of operation at Kasaan irregular for the same reasons already stated? A. Yes, sir.

Q. And the source of supply at Kasaan is what—traps or seines? A. Principally traps.

Q. Principally traps? A. Yes, sir.

Q. And the fish caught in the traps are brought in from what distance?

A. Oh, a distance of 60 or 70 miles from the cannery.

Q. And are they brought in at irregular hours?

(Testimony of Russell Mowry.)

A. Well, a lot depends on tides, winds and storms, so they do come in at all hours of the day.

Q. That is what I mean, that there is a variation of the daily operation dependent upon weather conditions, tides and other factors?

A. That is right.

Q. Is it necessary to keep the crew constantly present at the cannery to meet the conditions as they may exist from day to day?

A. That is right; available for work. [19]

Q. How about the first aid feature at Kasaan? Do you maintain a doctor there?

A. We maintain a first aid man.

Q. What distinction do you make between a first aid man and the doctor that you have described at Alitak?

A. The first aid man is generally a medical student or an interne, and the close proximity of Ketchikan to Kasaan makes it unnecessary to have a doctor there.

Q. So that the medical attendant at Kasaan is essentially a first-aid man, rather than a regular physician?

A. That is right.

Q. Now, you have stated that you had operations at King Cove and at Shumagin or Squaw Harbor in all three years of 1937, 1938 and 1939?

A. That is right.

Q. Those two canneries are relatively close to each other?

A. That is right.

Q. And out 'way to the westward along the Alaska Peninsula?

A. That is right.

(Testimony of Russell Mowry.)

Q. King Cove Cannery is on the mainland?

A. That is right.

Q. And the Shumagin or Squaw Harbor cannery is in the Shumagin Islands?

A. That is right.

Q. What is the distance between the two canneries, approximately? A. About 50 miles.

Q. 50 miles? A. About 50 miles, yes.

Q. And how far distant would they be from Juneau or any other [20] point?

A. Well, the nearest point of any consequence is Seward.

Q. Well, how far distant is Seward?

A. About 250 miles.

Q. Are there any facilities available at King Cove or Shumagin for the housing and feeding of the employees during the season other than such mess houses and bunk-houses as the company itself furnishes? A. No.

Q. Are lodging and meals furnished Shumagin and King Cove during the season in substantially the same manner, and for the same reasons you have already described with reference to Alitak?

A. Yes, sir; for the same reasons.

Q. How about the maintenance of a doctor or a first aid man at either King Cove or Shumagin?

A. Well, we have always employed a licensed physician at Shumagin, to take care of both canneries.

Q. And that is for the reasons that you have already described? A. That is right.

(Testimony of Russell Mowry.)

The Court: At this point, we will take a brief recess of five minutes.

(Recess)

The Court: You may proceed.

Q. (Mr. Carey, continuing) Now, what is the length of the operating season at King Cove and Shumagin?

A. The over-all length is about from the first of April to the middle of September.

Q. And the fish packed at these two canneries, I presume, are obtained from substantially the same character of [21] sources?

A. Traps, gillnets and seines.

Q. The cannery operation—the daily operation then is irregular, for the reasons that you have already stated?

A. Yes, sir; they are irregular—the operations are irregular for the reasons as I have already stated.

Q. And are the King Cove and Shumagin plants about the same size or capacity?

A. Well, King Cove has a little larger capacity than the Shumagin Cannery.

Q. And what is the relative size of the two plants?

A. Oh, King Cove can pack, in good years, an average of a hundred and seventy-five, and Shumagin will probably pack one hundred fifty.

Q. King Cove would rate as a relatively large cannery?

(Testimony of Russell Mowry.)

A. Probably the largest in Alaska.

Q. And the Shumagin probably larger than the average? A. That is right.

Q. Now, you stated that there were three canneries at Bristol Bay, Naknek, Nornek and Nushagek? A. That is right.

Q. They are all located relatively close to each other?

A. Oh, they are all located in Bristol Bay. Naknek and Nornek are on the southern part, and Nushagek is on the northern part.

Q. Of the Bay? A. Of the Bay.

Mr. Carey: I presume your Honor knows where Bristol Bay is.

The Court: Yes. [22]

Q. (Mr. Carey, continuing) Well, are they located sufficiently close together so that the operating conditions at one place are substantially the same as at the others?

A. They are practically identical.

Q. And what are the capacities of these three canneries on Bristol Bay?

A. Oh, they each can put up around 125,000 cases a year.

Q. And that would be at least the average?

A. That would be their capacity.

Q. Yes. A. And their average.

Q. And what number of men are employed during the season at these three Bristol Bay locations? A. Oh, about 600—600 or 700.

(Testimony of Russell Mowry.)

Q. That is, at the three places?

A. Yes, sir.

Q. And would they be equally divided as between the three canneries?

A. Pretty near, yes.

Q. Now, does the fishing or the operating season on Bristol Bay differ from the operating season at the other locations that you have already mentioned?

A. Yes. It is different in that they fish entirely by seine boats propelled by sail, and they have a very short and intensive season.

Q. And what kind of fish do they pack?

A. They pack almost exclusively red salmon.

Q. And the run of red salmon available for packing is over what period of time, ordinarily?

[23]

A. About the month of July.

Q. The month of July only? A. Yes, sir.

Q. Now, are there any accommodations for lodging or sustenance at these canneries other than the accommodations furnished by the company itself? A. No, none at all.

Q. And are those conditions furnished by the company for the same reasons that you have already described, taking Alitak as a representative?

A. That is right.

Q. And the means of getting the men to and from the cannery are the same as you have already described? A. Yes.

(Testimony of Russell Mowry.)

Q. How about medical aid furnished on Bristol Bay?

A. Well, we have a licensed doctor at Naknek who also takes care of Nornek, which is just across the river, and at Nushagek we have a first-aid man, as the Government has a hospital right close to there.

Q. Now, what you have already said covers the three Bristol Bay canneries?

A. That is right; the three canneries.

Q. You mentioned the cannery at Port Moller?

A. Yes.

Q. Which you said is on the northerly side of the Alaska Peninsula between Dutch Harbor and Bristol Bay?

A. That is right.

Q. And about how far east of Dutch Harbor is it, would you say?

A. About 200 miles east of Dutch Harbor, and about 400 miles [24] from the other canneries in Bristol Bay.

Q. It is about a third of the way from Dutch Harbor to Bristol Bay?

A. That is right.

Q. What sort of operation is that?

A. That cannery produces about 25,000 cases of salmon per year.

Q. That is a relatively small operation?

A. That is a relatively small operation.

Q. And about how many men are employed during the season there?

A. About 100.

Q. 100?

A. Yes, sir.

(Testimony of Russell Mowry.)

Q. And is the season at Port Moller longer or shorter than at Bristol Bay?

A. It is a little bit longer.

Q. Well, between what dates do you normally operate at Port Moller?

A. Well, the men get there about the first of June and leave there around the end of August.

Q. And what is the nearest permanent settlement to Port Moller? How far distant?

A. Dutch Harbor, about 200 miles.

Q. Are there any accommodations at Port Moller for the housing and feeding of the men other than those furnished by the Company itself?

A. No, none whatever.

Q. And is the housing and sustenance furnished there to the extent required on account of the number of men substantially the same as at Alitak, for instance? [25]

A. Yes.

Q. And for the same reason?

A. And for the same reason.

Q. Now, in the years that you operated—in 1937 and 1939, you operated at Port Moller, but you had no operation at all in 1938, I understand?

A. That is right.

Q. That leaves but one remaining cannery in the list, and that is at Petersburg. The Petersburg cannery was operated in '37 and '38, but not in 1939, as I understand it?

A. That is right.

Q. And that cannery is located in the town of Petersburg?

A. Yes.

(Testimony of Russell Mowry.)

Q. In southeastern Alaska? A. Yes.

Q. How large a place is Petersburg?

A. Oh, I would say that it is a town of about 2,000—1500 or 2000 people.

Q. And at what time of the year——

A. (Interrupting) During the summer.

Q. Are those permanent residents?

A. No. That is just during the summer.

Q. During the summer? A. Yes, sir.

Q. And are there any canneries at Petersburg other than that of the Pacific American Fisheries?

A. There is one small cannery run by Keene Taylor, and the Scow Bay Packing Company.

Q. Does the company maintain accommodations for lodging and feeding its employees at Petersburg as at the other [26] canneries described?

A. Yes, sir.

Q. And for substantially the same reason?

A. Yes, sir.

Q. The fish packed at Petersburg are obtained from what sources?

A. From traps and seines.

Q. Now, how does it happen that at Petersburg, which you say is an established community, the company finds it necessary to maintain its own accommodations for lodging and feeding its employees during the season?

A. Well, the town is not big enough to accommodate the influx of cannery help during the cannery season. It is just economically impossible

(Testimony of Russell Mowry.)

for the local people there to furnish the food and lodging.

Q. So, as a practical matter, you are confronted with the same situation as at a cannery farther removed from an established settlement?

A. That is right.

Q. Does the matter of the irregularity of the incoming fish have anything to do with the necessity of maintaining your own accommodations at the cannery there?

A. Where you have seine fish, you never know when they are coming in, and you have to have the crew standing by.

The Court: I wonder if it is material to show the necessity of furnishing food and lodging. The question is whether it was done or not, isn't it?

Mr. Carey: What is that?

The Court: Is not the only question whether or not the company actually did furnish lodging and food to the [27] men?

Mr. Carey: Oh, no; the question is the circumstances under which it was furnished—whether it was furnished by way of additional compensation, or whether it was furnished as a matter of operating necessity.

The Court: Well, if the men want it, and the company furnishes it, as part of their compensation, it is difficult for the Court at this time to see why it is material as to why it is necessary to be so furnished or not, but I will hear it.

Mr. Carey: Of course, we admit that it is ne-

(Testimony of Russell Mowry.)

cessary for workmen to have a place to live and eat.

The Court: I think that you know that that is not the point.

Mr. Carey: I did not catch the point of your Honor's suggestion.

The Court: Whether or not it was necessary or not for the men to receive it from the company, or whether they might have received it from some other source, other than from the company, it seems to me at this stage, is not particularly important, but if you think it will turn out to be important, of course——

Mr. Carey: (Interrupting) Well, that is the point of our claim.

The Court: All right.

Mr. Carey: That will be our direct examination, your Honor, and I would like to reserve the right during the noon hour to get a copy of that contract.

The Court: You may do that, and then ask him such further questions as you may need to ask in that [28] connection. That right is reserved. Any cross examination?

Mr. Winter: I would like to reserve my cross examination until we have the contract here.

The Court: All right. Step down. Call your next witness.

(Witness excused)

Mr. Winter: I would not ask to have the con-

tract for every year, but I would like to get a representative contract.

Mr. Carey: If you will tell me what year you want, I will try to get that particular contract.

Mr. Winter: I think 1938 would be a good contract for a representative year, that is, the contract for each cannery. If you will agree that in all contracts there is a provision similar to Section 21 of the contract of 1942, that is, where the company does not furnish room and board it shall pay the men in the Southeastern District south of Yakutat, \$60.00 a month and in the balance of Alaska \$70 a month, that will be all right with me.

Mr. Carey: No, I cannot make a stipulation as to a contract that I do not have any knowledge of.

Mr. Winter: Well, this is the contract made by the Pacific American Fisheries.

Mr. Carey: Well, I cannot agree to that.

Mr. Winter: Well, we want to see all the contracts, then.

The Court: Proceed, gentlemen. I think that it might not be out of place for the Court to remind counsel that I think it will be appropriate for all of us to avoid [29] tendencies to become excited. I want to assure both counsel that I do not think that that is necessary. Let us try to avoid becoming excited, or speaking in an excited voice.

Mr. Carey: I assume that your Honor is directing that particularly——

The Court: (Interrupting) I am not directing

it to either counsel. I am making a statement to till concerned in the case.

Mr. Carey: All I say I am going to do is that, to the best of my ability, I am going to try to produce the contract after the noon hour. I will try my best to get it during the noon hour.

The Court: That may be true. And I will repeat that the Court's statement is not inspired by the single statement of either counsel. It is inspired by what has transpired during the course of the morning's testimony.

FRED W. TEGTMEYER,

called as a witness on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carey:

Q. Will you state your name?

A. Fred W. Tegtmeier.

Q. How do you spell your last name?

A. T-e-g-t-m-e-y-e-r (spelling).

Q. You are connected in some official capacity with the Alaska Pacific Salmon Company? [30]

A. Yes, sir.

Q. And that company, as I understand it, was formed in the year 1939—1929, rather.

A. Yes, sir.

Q. And has operated in Alaska either at one place or another every year since?

(Testimony of Fred W. Tegtmeyer.)

A. Yes, sir.

Q. And what has been your position during those years with the company?

A. From 1929 to 19—in 1929, I was travelling auditor. From 1930 to 1936, inclusive, I was cannery bookkeeper. From 1937 to date, I am the home office auditor.

Q. Now, as the result of your various positions with the company, are you familiar with the operations as carried on in the various locations in Alaska Pacific Salmon Company during the years 1937, 1938, and 1939? A. Yes, sir.

Q. Did the Company during the year 1937 carry out an operation at Drier Bay? A. Yes, sir.

Q. And where is Drier Bay located?

A. Drier Bay is on Knight Island in Prince William Sound, approximately 75 miles west of Cordova.

Q. What was the operation that was carried on at Drier Bay in the year 1937?

A. A fishing operation only.

Q. That is, you mean you didn't operate a cannery?

A. We did not operate the cannery or pack fish.

Q. Well, what facilities were actually operated during that [31] year?

A. Five floating traps. The gear were made up, traps put in, and fished, and the fish hauled to another cannery for packing.

Q. Now, the company, as a matter of fact, owned the cannery at Drier Bay, did it not?

(Testimony of Fred W. Tegtmeyer.)

A. Yes, sir.

Q. But in the year 1937, it did not operate the cannery?

A. That is right.

Q. It did operate the traps to catch the fish?

A. Yes, sir.

Q. And the fish caught in those traps were under some arrangement packed at a different cannery?

A. Yes, sir.

Q. So that the men employed at Drier Bay in 1937 were all employed in some capacity or other in relation to the operation of the traps at distinguished from the cannery?

A. With the exception of a watchman.

Q. By that, you mean a watchman at the cannery?

A. A watchman for the cannery.

Q. How many men were employed at Drier Bay in 1937?

A. Approximately 30.

Q. And how were they housed and fed there?

A. At the cannery.

Q. And by whom?

A. Such time as they were on shore.

Q. How is that?

A. Such time as they were on shore.

Q. And by whom?

A. By the company

[32]

Q. That is, the cannery building itself was used as a rooming house while they were there?

A. The bunkhouse and the mess house.

Q. And while they were not on there, how were they housed or fed?

(Testimony of Fred W. Tegtmeier.)

A. They were on the boats or on the gear scow and fed by the company.

Q. In either event, the sustenance and shelter were furnished by the company? A. Yes, sir.

Q. Were there any means of housing or feeding these men otherwise than were done by the company? A. No, sir.

Q. The season at Drier Bay in 1937 extended between what dates, approximately?

A. Approximately from April 1st to September 1st.

Q. What were the reasons which required the men to be housed and fed by the company?

A. No other accommodations for them nearer than Cordova, and I do not know whether there were accommodations even at Cordova for them.

Q. Well, Cordova is how far distant?

A. 70 miles distant.

Q. Would it be practical to have the men live at Cordova and work on these traps?

A. No, sir.

Q. Were the operations on the traps from day to day regular or irregular? A. Irregular.

Q. Did that factor have any relation to the necessity of [33] having the men on the job available at all times? A. Yes, sir.

Q. Now, you did not operate at all at Drier Bay in 1938 or 1939? A. No, sir.

Q. You had an operation at Sand Point in all three years, did you not? A. Yes, sir.

Q. And would the operation as carried on in

(Testimony of Fred W. Tegtmeyer.)

the year 1937 be substantially identical with that carried on in the two succeeding years?

A. Yes, sir.

Q. Sand Point is located where?

A. About 350 miles or maybe 300 miles east of Dutch Harbor in the Shumagin Islands.

Q. Now, that is very close to the Shumagin or Squaw Harbor Plant of the Pacific American Fisheries, is it not?

A. About 10 miles.

Q. Would the operation carried on by the Alaska Pacific Salmon Company at the Sand Point plant be substantially identical with the Pacific American Fisheries' operations at King Cove and Shumagin as described by Mr. Mowry?

A. I think so, yes, sir.

Q. And would that be true as to the housing and feeding of the men?

A. Yes, sir.

Q. You have already stated about the irregularity of the daily operation?

A. Yes.

Q. Does that apply equally? [34]

A. Yes, sir.

Q. And did you state what the season is at Sand Point?

A. The season at Sand Point is from the first of April or the middle of August or the first of September. The first of September is a better date.

Q. About what number of men are normally employed at Sand Point?

A. About 180.

Q. And the normal pack at Sand Point is how many cases?

A. About 125,000.

(Testimony of Fred W. Tegtmeyer.)

Q. That would be probably a little more than what would be regarded as an average sized cannery, wouldn't it?

A. It is a little over average, yes.

Q. What is the reason for the company supplying board and lodging at Sand Point?

A. Because there are no other accommodations available for the employees.

Q. Would it be practical for the operation to be carried on at all if the board and lodging were not supplied by the company itself?

A. No, sir.

Q. For its convenience?

A. No, sir; it could not.

Q. At Sand Point, do you furnish any medical aid?

A. There is no medical aid at the cannery, but we have a joint agreement with the Pacific American Fisheries to call on their doctor at Squaw Harbor in the Shumagin Islands.

Q. That is ten miles distant?

A. About ten miles distant. [35]

The Court: Speaking of that necessity of the company furnishing food and lodging, would it have been humanly possible for the men themselves to furnish their own food and lodgings?

The Witness: No, sir; there is no other lodging available there than the company bunkhouse, and as far as the food is concerned, we do not maintain a store there for sale purposes. Neither could the men, due to the irregular work and the number of hours put in, prepare their own meals. The ma-

(Testimony of Fred W. Tegtmeyer.)

jority of the time during the fishing season, we limit the meal hours to 30 minutes.

The Court: Would it be possible for them to carry food supplies with them?

The Witness: For their meals?

The Court: Yes.

The Witness: If they had a way to prepare it, or were able to prepare the food before they went to work in the morning, they might carry a noon meal with them, although it is rather hard to carry an evening meal, and possibly a midnight meal.

The Court: If the company arranged to use its own facilities for supplying lodging and food to the men, is it possible that the company might by some arrangement let the workmen have the use of the premises, to prepare their own meals in their own way—arrange for the preparation there?

The Witness: I would not be in a position to speak on that.

The Court: You may inquire.

Q. (Mr. Carey, continuing) Well, would it be an operating—[36] as an operating matter, would it be practical for the individual man to take care of his other work and look after preparing his own meals?

Mr. Witness: We will object to that as leading.

The Court: Objection overruled.

A. I would not consider that it was practical, no.

Q. (Mr. Carey, continuing) You have a staff of cooks and waiters there to run the mess house, I presume?

A. Yes, sir.

(Testimony of Fred W. Tegtmeyer.)

Q. Well, take at Sand Point, for instance—in the operation of the mess house during the season, how many cooks and waiters do you have who are assigned exclusively to that work?

A. I cannot say. I have not followed the situation close enough to know.

The Court: Is some of this lodging furnished on board a floating vessel?

The Witness: Yes.

The Court: Could it have been possible to float it in such vessels at each of the canneries by the men themselves, if they had wished to have done so?

The Witness: No. Those gear scows are dependent upon the cannery tenders, and many times they stay out at the traps for several days at a time.

Q. (Mr. Carey, continuing) I do not know whether I understood the answer you made to his Honor. The men who work on the boats, they ordinarily eat and sleep on the boat on which they are employed?

A. Yes, sir.

Q. The men who work on the land, they eat and sleep in the [37] mess house and bunkhouse?

A. Yes, sir.

Q. On the land?

A. Yes, sir. Well, as I understood his Honor's question, the court had in mind whether these men could come ashore and prepare their own meals, is that correct?

The Court: No. I had in mind whether every workman of each cannery might not by the company be supplied with lodging on board some floating

(Testimony of Fred W. Tegtmeyer.)

equipment instead of on shore. Was there any such general lodging accommodations supplied to the general workmen in the cannery—such lodging supplied to the general workmen by the company on floating equipment as distinguished from those on land?

The Witness: No. All land workmen were supplied on land.

The Court: What about those floating cannery operations that we have heard about?

Mr. Carey: Well, we haven't any of those.

The Court: Isn't all the lodging supplied the people connected with the enterprise furnished on board floating equipment?

The Witness: I cannot say. We have no floating canneries, and I am not familiar with their system of operation.

The Court: You may inquire further.

Q. (Mr. Carey, continuing) Now, the four remaining canneries operated by the Alaska Pacific Salmon Company were all located in Southeastern Alaska? A. Yes, sir.

Q. And all four—that is, Kake, Ketchikan, Port Althorp [38] and Rose Inlet, were all operated each of the three years of 1937, 1938 and 1939?

A. Yes, sir.

Q. Taking the Kake cannery first, where is the Kake cannery located?

A. About 60 miles west of Petersburg.

Q. And is Petersburg the nearest established settlement? A. Yes, sir.

(Testimony of Fred W. Tegtmeyer.)

Q. The operation at Kake is carried on by the Alaska Pacific Salmon Company in all essential particulars similar to the southeastern Alaska operations as described by Mr. Mowry, is it not?

A. Yes, sir.

Q. Like Kasaan? A. Yes, sir.

Q. And Petersburg? A. Yes, sir.

Q. The fish are caught in the same way, and the cannery operated in the same way, and sustenance and lodging furnished in the same way?

A. Yes.

Q. And for the same reasons? A. Yes, sir.

The Court: At this point, we will take in this case the noon recess.

Mr. Carey: If your Honor will give me half a minute, I will dispose of two canneries.

The Court: That is fine.

Q. (Mr. Carey, continuing) Now, what you said about Kake would apply equally to Port Althorp and Rose Inlet? [39] A. Yes, sir.

Q. Port Althorp is located how far distant from the nearest settlement?

A. Oh, approximately 120 miles west of Juneau, about 70 miles north of Sitka.

A. And Rose Inlet?

A. About 60 miles west of Ketchikan.

Q. In the same general vicinity as Kake?

A. Yes, sir. No, Kake is west of Petersburg, and Rose Inlet is west of Ketchikan.

Mr. Carey: Pardon me. That is all.

The Court: Those connected with this case are excused until two o'clock this afternoon.

(Whereupon, an adjournment was taken at 12:00 noon July 8, 1942, to 2:00 p.m. July 8, 1942.) [40]

2:00 p.m.

July 8, 1942

The hearing was resumed, pursuant to the taking of noon recess, and the following proceedings were had:

(All parties present as heretofore noted.)

FRED W. TEGTMEYER,

called as a witness on behalf of the Plaintiffs, resumed the stand for further examination.

The Court: You may proceed.

Direct Examination

(continued)

By Mr. Carey:

Q. Mr. Tegtmeyer, during the morning, we covered all of the operations of the Alaska Pacific Salmon Company except that at Ketchikan. Your company has a cannery at Ketchikan which was operated in the three years of 1937, 1938 and 1939, is that right? A. Yes, sir.

Q. What is the fact as to whether or not the operation of your cannery at Ketchikan is substantially the same as the PAF cannery at Petersburg, as described by Mr. Mowry?

(Testimony of Fred W. Tegtmeier.)

A. Practically the same condition.

Q. And you house the men, feed them, and handle them in substantially the same way, and for the same reason?

A. Yes, sir.

Q. Now, in all these canneries that you have described, operated by your company, the Alaska Pacific, are they all canneries located on land, or are any of them floating canneries? [41]

A. All of them are on land.

Mr. Carey: You may cross examine.

Cross Examination

By Mr. Winter:

Q. Mr. Tegtmeier, did you have a written contract for each of those years?

A. I don't know. I do not have anything to do with the labor contracts in our department.

Q. You do not know then the basis on which the men were paid?

A. No, sir.

Q. And all that you presume to tell is about the operations—how the operations were conducted up there?

A. Yes, sir.

Q. Were you ever present at the Ketchikan cannery?

A. I was at the Ketchikan cannery—

Q. (Interrupting) During 1937, 1938 and 1939?

A. In 1939, yes, sir.

Q. You were not up there before?

A. Not in those other two years.

Q. In 1939, how many men lived away from the bunkhouse?

(Testimony of Fred W. Tegtmeyer.)

A. I don't know. I was only in there for about five or six hours north and southbound.

Q. Well, don't you know as a fact that there were men—natives of Ketchikan who worked at the cannery during the canning season?

A. I would not swear to that. I was under the impression——

Q. (Interrupting) Did you make any investigation——

Mr. Carey: (Interrupting) Just let him answer the question. [42]

Mr. Winter: All right.

A. I was under the impression that there were, from looking at the payrolls.

Q. And what allowance would be made those men, according to the payroll records, when they did not take board and room?

A. As I see it, there is no comparison between the situations. The parties that did not remain at the cannery, that lived at home, were a bunch of what we call "locals" that were paid by the hour.

Q. That were paid by the hour?

A. Yes, when we called them to work. The regular cannery employees in the majority of cases were on a monthly contract.

Q. All right. Now, with regard to the net setters. What allowance would you make to the net setters? Do the books show what allowance was made when the company did not furnish room and board? Was it \$1.25 a day during 1939?

A. I don't know.

(Testimony of Fred W. Tegtmeier.)

Q. Well, there was some allowance for the net setters when the company did not furnish the room and board, isn't that right?

A. Not that I know of.

Q. You don't know of that?

A. No, sir. Personally, I do not know of any of the regular employees that stayed there for the year that boarded at home.

Q. Are you familiar with the basic pay scale that was in effect during 1939?

A. Well, generally, to the extent that the regular employees [43] of the Fishermen's and the other unions were paid by the month.

Q. They were paid by the month, were they?

A. Yes, sir.

The Court: I think you should have in mind what he said at the outset of his cross examination, that he was familiar primarily with the operations rather than with the union contract.

Mr. Winter: I see.

Q. (Mr. Winter, continuing) And I take it that if you were not up in Ketchikan until 1939, that you do not know anything about the relations up there in 1937 and 1938 except from hearsay?

A. Except from hearsay, and going over the records.

Q. And where else were you in 1939?

A. I was at Kake for about 2 years.

Q. About 2 years at Kake? A. Yes, sir.

Q. And did you go out on any of the boats where

(Testimony of Fred W. Tegtmeyer.)

they were fishing, to see how they got their meals or anything on the boats?

A. I had no meals on the boats, no. No, I was not at Kake on any of the fishing boats.

Q. Where else were you?

A. I was at Port Althorp for 10 days to 2 weeks—probably about 10 days.

Q. Did you make a swing around all of the canneries? Was that your purpose?

A. No. The bookkeeper at Port Althorp was taken sick, and I went up to see that the assistant bookkeeper, who was a [44] new man, had things in line.

Q. Were you at Drier Bay? A. No, sir.

Q. Then you do not know whether any man lived offshore or away from the bunkhouses there, do you? A. No, sir.

Q. And how about at Kake?

A. I would say that I don't know. I know that the men lived on boats at that time, and on the gear scow, because I saw the gear scow coming in with the men, and the boats coming in with the men at Kake, Port Althorp and Ketchikan.

Q. You do not know whether any other men were living there at Kake away from the cannery?

A. No.

Q. Nor at Rose Inlet?

A. I was not to Rose Inlet in those three years.

Q. You never were at Rose Inlet in those three years? A. No, sir.

(Testimony of Fred W. Tegtmeier.)

Q. Did you say, or do you say, that you were at Sand Point?

A. No, sir; I have never been to Sand Point.

Q. So therefore what you have been testifying to is just what you heard, and from the books?

A. It is hearsay, and from the books for those three years. My knowledge of those distances—my knowledge of the distances of the canneries from the towns is based on the fact that I have been to all of the canneries in previous years except Sand Point.

The Court: That was a part of your work, was it, to look the books over and the facts reflected by the books?

The Witness: Yes. I was travelling auditor all the [45] time.

Mr. Winter: We move to strike this witness' testimony on the ground that it is based on hearsay.

The Court: I will hear you on that.

Mr. Winter: Now, the books are hearsay so far as this witness is concerned. He didn't go up there to prepare the books. All we have here is a geography lesson, it seems to me.

The Court: It seems to me that possibly some of this objection may have been noted earlier in the proceedings and since the answer was made and he said that the source of his information was not only hearsay, but the facts disclosed by those books which he had the duty as traveling auditor to examine, that at this stage your objection should be overruled.

(Testimony of Fred W. Tegtmeyer.)

Mr. Winter: I will withdraw the objection and interrogate him a little further on that.

The Court: Very well.

Q. (Mr. Winter, continuing) When you say that you obtained these facts from the books, you mean that they showed considerable expenditures for board and room for the employees, is that what you base your testimony on?

A. We have an account in the books for the operation of the mess house.

Q. Then you are basing your testimony entirely upon the cost or charges on the books for the mess house?

A. What testimony have you in mind?

Q. Well, the testimony that it was necessary for the men to live there.

A. No, that is not based on the books. That is based on my [46] own knowledge in being a Kake for three years—for three summers, and at Ketchikan for six or eight summers, and visiting the others.

Q. That was prior to 1937, was it not?

A. That was prior to 1937, yes.

Q. And you do not know what the conditions were subsequent to 1937 except as shown by the charges on the books?

A. Except as shown by the charges on the books and conversations had with the various superintendents, bookkeepers and employees.

Q. You do not know what percentage of the men actually lived away from the bunkhouse, do you?

(Testimony of Fred W. Tegtmeier.)

A. No, sir.

Q. Or what percentage of them furnished their own food when they were on board acting, for instance, as set netters?

A. I found nothing in the record to indicate that any of them furnished their own food. In all the employees' accounts for payment, I found nothing to indicate that there was any food charged for at any time.

Q. Then you say that there was nothing on the books to show that the set netters were paid \$1.25 per day when there were no provisions on board, or board furnished by the Company—that it never happened in any of your operations?

A. I said that I didn't notice it, or I didn't see it on the books.

Q. Well, how would it be shown if it were on the books?

A. It would be shown as a deduction.

Q. Or would it be shown just as a charge for the fish?

A. I do not know how it would reflect in the charge for the fish. [47] There may have been various rates paid for the fish, as there always is, but if there was a board allowance, the men would have received credit for it in addition to the fish, as far as I can see, and if there was a deduction for groceries, that would have shown as a deduction for the employees. There are approximately 1,000 or more employees, and naturally I cannot audit and

(Testimony of Fred W. Tegtmeyer.)

check over every item of deduction for all of the employees.

Q. Well, what is shown on the books of your corporation under the board and room allowance to the fishermen?

Mr. Carey: Gill netters, you mean?

Mr. Winter: I mean any of the fishermen; any of the cannery workers.

A. Nothing that I know of.

Q. What do you consider as a reasonable board allowance?

Mr. Carey: I object to that as immaterial and irrelevant.

Mr. Winter: I will amend that.

Q. (Mr. Winter) Board and room allowance.

Mr. Carey: There is not any question here involved—no contest about the reasonableness of the dollar a day that is involved here.

The Court: The purpose of it is that you are seeking to show what is a reasonable amount as it appears in the books?

Mr. Winter: Yes, in the books.

The Court: Deductions in similar instances?

Mr. Winter: Yes, your Honor.

The Court: Objection overruled. The witness may answer.

A. Well, that is a little hard to say. It varies in the [48] different years, and at the different canneries so far as the cost of meals is concerned. As far as the lodging is concerned, there is practically no expense except depreciation and a little fuel, and

(Testimony of Fred W. Tegtmeier.)

so forth, that is not definitely allocated to the bunk-house but that is a part of the camp operation. But I would say that a dollar in those three years—in those three years, probably a dollar to a dollar and ten cents for meals exclusive of bed or room would be a reasonable allowance. They are furnished a room, cot and mattress, and they furnish their own bedding.

Q. (Mr. Winter, continuing) Then in addition to the basic pay, as I understand from your testimony, your company furnished to all of the cannery workers without exception, lodging and board for those three years?

The Court: He said exclusive of bedding—lodging exclusive of bedding.

Mr. Winter: Yes, lodging exclusive of bedding.

The Court: Which would be sheets and blankets.

The Witness: Sheets, blankets, pillows and so forth. We furnished the mattress and springs—the spring, mattress and the room.

The Court: And anything else that goes on the bed the workman has to supply himself.

The Witness: Yes, sir; unless it is a mattress cover which we put on for cleanliness. And in some cases,—well, I would not say just what we do furnish in the last three years as far as soap and some of those features go, because I do not know what the policy is under the labor agreements.

The Court: Is there anything else? [49]

Mr. Winter: I think that is all.

Mr. Carey: That is all.

(Testimony of Fred W. Tegtmeyer.)

The Court: You may step down.

(Witness excused.)

Mr. Carey: Mr. Mowry, will you please resume the stand again?

RUSSELL MOWRY

recalled as a witness on behalf of the Plaintiffs, having previously been duly sworn, was examined and further testified as follows:

The Court: You have already been sworn.

Direct Examination

By Mr. Carey:

Q. Mr. Mowry, I want to ask you one additional question. These nine canneries that were operated during these years by the Pacific American Fisheries, were they all land canneries, or were some of them what is known as floating canneries?

A. No, they are all land canneries.

Q. You operated no floating canneries at any time?

A. No floating canneries.

Mr. Carey: That is all. You may cross examine.

Cross Examination

By Mr. Winter:

Q. Mr. Mowry, are you familiar with the operations in all of the canneries up there personally?

A. You mean personally if I have ever visited them?

Q. Yes. [50]

(Testimony of Russell Mowry.)

A. No, I have never visited them.

Q. And all the testimony that you are giving as to how they are operated, I take it, is from the same basis—from the books, as to what the charges show?

A. Not necessarily. You cannot be comptroller of a company without knowing the operating conditions.

Q. Well, where did you get your information, from what someone told you, or from the books?

A. Well, you have to get it from the books. You assimilate the knowledge. I have been in this for twelve years.

Q. You do not know of your own knowledge how many men in any of those canneries lived at home, do you?

A. I certainly know that they did not live at home if there were no homes there.

Q. Well, in Ketchikan there are homes, aren't there?

A. We do not have any operations in Ketchikan.

Q. Well, you have operations near Ketchikan?

A. We have one 30 miles from Ketchikan.

Q. At Kasaan?

A. Yes, which is 30 miles from Ketchikan.

Q. Do you know of anyone who went up there on his own boat—any man that went up there—any natives?

A. If any man went up on his own boat, I would know about it.

Q. How would you know about it, from the books?

(Testimony of Russell Mowry.)

A. No. I would know about it because we have always taken care of the transportation of the men north and southbound.

Q. Did you have anything to do with the contracts of employment which were made with the Union for all the men?

A. I assisted somewhat.

Q. You assisted? [51] A. Yes, sir.

Q. Did you bring any of those contracts with you? A. No, sir.

Q. Do you know what the contract was for the employment of those men, as to what wages and remuneration they were to receive?

A. I certainly do. I read the contracts and had the contracts filed, and I paid the men off. I read the contracts and had them filed.

Q. You read them and had them on file?

A. Yes, sir.

Q. You know, as a matter of fact, Mr. Mowry, that in the contract, allowance was made for set netters to be paid \$1.25 per day in addition to their regular compensation where no board and room were furnished, don't you?

Mr. Carey: Just a minute. Now, I object to that upon the same ground that counsel himself objected, that the contract is the best evidence.

Mr. Winter: If you won't produce them, we will.

Mr. Carey: I object to any such insinuation as that, and move to strike that from the record.

The Court: It may be stricken. Please refrain from such remarks, counsel.

(Testimony of Russell Mowry.)

Mr. Carey: Now, on this question of these contracts, your Honor, although this case was pending for a year, no demand was ever made upon us to produce any of these contracts. I did not consider the actual production of the contracts necessary for our case. However, in view of what transpired this morning, I made such inquiries as I could. I found that the contracts for 1937, 1938 and 1939 [52] are available—at least copies of them, so far as the Alaska Pacific Salmon Company is concerned, and I have those office copies here. So far as the contracts for the Pacific American Fisheries are concerned, they are in Bellingham, and I have not been able to get them here.

I am not relying upon those contracts as part of my case. I do not propose to introduce them. The ones that I have been able to get during the noon hour, however, are here, and they are available to counsel if he wants to examine them. If counsel or the court think that the PAF contracts are necessary, your Honor, I will have to get them from Bellingham when I can.

Mr. Winter: I will have this marked.

The Court: That will be Defendant's A-1 for identification.

(Whereupon, contract between Pacific American Fisheries, Inc. and Alaska Fishermen's Union at Nornek for the 1939 season was marked Defendant's Exhibit A-1 for identification.)

The Court: Have you seen this, Mr. Carey?

(Testimony of Russell Mowry.)

Mr. Carey: No, I have not. I would like to see it.

The Court: Plaintiff's counsel may see it. If there are any others of a like nature, Mr. Winter, and if it is agreeable to your convenience——

Mr. Winter (Interrupting): We would like, in view of counsel's offer, to have him produce the 1937, 1938 and 1939 contracts which he says are available.

Mr. Carey: Of which company, now?

Mr. Winter: Of either company.

Mr. Carey: What is that?

Mr. Winter: Of either company. [53]

Mr. Carey: Well, you did not listen to what I said, apparently, Mr. Winter. I said the Alaska Pacific contracts are available here now.

The Court: For those years that he mentioned?

Mr. Carey: For those years that he mentioned. The Pacific American Fisheries contracts are not here.

The Court: Will you hand them to the clerk? As I understand it, Mr. Carey is going to produce those that he does have.

Mr. Carey: Let me dispose of this first.

The Court: I gave you the opportunity to look at that contract which is Defendant's Exhibit A-1 for identification.

Mr. Carey: I have no objection to this.

The Court: Do you wish to ask the witness concerning this for identification, Mr. Winter, so that the record will show what it is?

(Testimony of Russell Mowry.)

Mr. Winter: Yes, your Honor.

The Court: You may proceed.

Q. (Mr. Winter, continuing): Are you familiar with Mr. Archie W. Shiels' signature?

A. I certainly am.

Q. Showing you what has been marked for identification as Defendant's Exhibit A-1, I will ask you to state whether or not—I will ask you to state whose signature appears on that document?

A. That is Mr. Shiels' signature, president of the Pacific American Fisheries.

Q. Will you examine that document and state to the Court what it is? [54]

Mr. Carey: I think that the court can see what it is, just as well as he can.

The Court: That objection will be sustained.

Mr. Carey: We do not question that it is a contract with the Pacific American Fisheries.

Mr. Winter: Well, we will offer it in evidence, if the Court please.

The Court: Any objection?

Mr. Carey: No objection.

The Court: Defendant's Exhibit A-1 is admitted.

(Whereupon, contract between Pacific American Fisheries, Inc. and Alaska Fishermen's Union covering men employed at Nornek, 1939 season, previously identified as Defendant's Exhibit A-1, was admitted in evidence as Defendant's Exhibit A-1.)

The Court: Now, if Mr. Carey has those other

(Testimony of Russell Mowry.)

contracts for the company that he mentioned, for the years that were mentioned by Mr. Winter, he may have the clerk have them temporarily.

Mr. Carey: Yes, I will give them to the clerk, but may I be permitted to ask a question about this contract and we can clean that up?

The Court: You may do that first, if you like.

Mr. Carey: That will be more orderly.

The Court: After which Mr. Winter may proceed further with his examination of this witness.

Mr. Carey: Were you through with this witness?

Mr. Winter: No, I am not through with him yet.

Mr. Carey: Oh, I see.

The Court: You may reserve your further inquiry, Mr. Carey, and you may proceed, Mr. Winter.

[55]

Q. (Mr. Winter): I take it that this is the contract that your company had with the seamen and fishermen and trapmen and beach men during 1939, covering those men or those employees that sailed on the vessel Clevedon, is that right?

A. That is not altogether right. This is a contract with the Alaska Fishermen's Union, as I see it, for Bristol Bay only.

Q. Just for Bristol Bay?

A. Just as I saw it, when I looked at it, and it covered one voyage of the Clevedon.

Q. You may look at it. What I want to know is this, were similar contracts executed between your

(Testimony of Russell Mowry.)

company and the Fishermen's Union with respect to the other operations during that year?

A. Yes, but they were not on this form.

Q. Well, do you know——

A. (Interrupting): This is a very special form of contract.

Q. For Bristol Bay?

A. For Bristol Bay, and for the ship that the men traveled on.

Q. Now, can you state,—in Bristol Bay, as you know from the records, there were certain net setters for whom provision was made for board and room.

A. To my knowledge, we never had a net setter.

Q. Well, you did enter into this contract?

A. Yes, sir.

Q. And if there were any net setters, then, of course, under the contract, they were to be allowed a provision of \$1.25 per day—— [56]

Mr. Carey: (Interrupting) I object to that as a question based purely upon a false hypothesis. The witness said that there weren't any net setters. Of course, this is a uniform contract made with the Alaska Fishermen's Union designed to cover net setters, if there are any such men, and, of course, if there are no such men, the contract is not applicable.

The Court: I think the Court should sustain that objection.

Mr. Winter: I submit that that is correct, your Honor.

Q. (Mr. Winter, continuing) It was your un-

(Testimony of Russell Mowry.)

derstanding, then, under this contract, that you were going to furnish board and room to all of the employees of the company, wasn't it?

Mr. Carey: I object to that.

Mr. Winter: I am asking what his understanding was.

Mr. Carey: His understanding may be right, or it may be wrong. It doesn't make any difference. The contract is here. The question is, what does the contract provide?

The Court: That objection is sustained.

Q. (Mr. Winter) Well, did you negotiate for the corporation with the union in entering into the contracts at any time?

A. To a certain extent, yes.

Q. And you read this contract, did you not? You did not sign it, however, did you? A. No.

Q. Were you present when it was signed? [57]

A. No.

Q. What? A. No.

Q. I think that I asked you, you had similar contracts—contracts on different forms, however,—for other years?

Mr. Carey: Just a minute, now. I object to that.

Mr. Winter: Well, I am just asking him if he had them.

Mr. Carey: Your Honor, I am objecting on the ground that it is immaterial whether he did or not. We have agreed to furnish any contracts that counsel calls for as soon as we can get them, and it is

(Testimony of Russell Mowry.)

improper to ask about some other contract based upon whether it is or it is not similar to this. The best proof is the contract itself.

The Court: That particular objection, the Court is going to overrule. If he knows the answer to that question, he can give it. The only objection is that you haven't specified the years.

Mr. Winter: I will limit it to the years 1937, 1938 and 1939—the years involved.

The Court: With that limitation, the objection is overruled.

Mr. Carey: The question asked was, did he have similar contracts, and then he said "Contracts on different forms". Well, if they are similar, they must be on the same form. If they are on different forms, they are not the same contract.

The Court: I think that this witness is an intelligent man, and I think that he understands the question, if he [58] has sufficient knowledge to answer. So he may answer the question. If he cannot, he may say so.

A. We had contracts on the same form. This contract is for Nornek. We had the same form of contract for Naknek and Nushagek, and contracts on other forms for other canneries.

Q. Can you produce a contract on another form which is different from this one?

Mr. Carey: Well, I agreed to do so.

The Court: Your promise about these includes that?

(Testimony of Russell Mowry.)

Mr. Carey: Why, surely. Any contract that counsèl wants, if he will let us know what he wants, we will get it.

The Court: Very well. Your question is proper, and I think that the answer likewise is proper.

Q. (Mr. Winter) You say that you have other contracts?

The Court: Mr. Carey, the counsèl, said that he would get them.

Mr. Winter: Very well.

Q. (Mr. Winter, continuing) Did the other operators have similar contracts to this contract, Government's Exhibit A-1?

Mr. Carey: I object to that.

Q. (Mr. Winter) If you know.

The Court: What other operators?

Mr. Winter: I mean other canneries.

Mr. Carey: I object to that as immaterial.

Mr. Winter: If he knows.

The Court: Sustained. If you wish to confine it to someone a party to this suit, the Court may have a [59] different view of it.

Q. (Mr. Winter, continuing) Did the Alaska Pacific Salmon Company have a similar contract to this, if you know?

Mr. Carey: Just a minute. I object to that. This witness is not produced as a witness on behalf of the Alaska Pacific Salmon Company.

The Court: The two cases, I understand, are consolidated for trial, and if he knows the answer

(Testimony of Russell Mowry.)

to the question, I do not see why it should not be competent for him to state it.

Mr. Carey: Well, he was not with the Alaska Pacific Salmon Company in 1937, 1938 and 1939.

The Court: Well, he may possibly have the requisite knowledge, even though he was not. Objection overruled.

A. The Alaska Pacific Salmon Company did not have a contract on that form.

Q. (Mr. Winter) Did they have a contract on the form to which you just referred to in your previous answer? A. They probably did.

Q. Those contracts with the Alaska Fishermen's Union would apply to the whole industry in a particular area——

Mr. Carey: (Interrupting) I object to that.

Q. (Continuing) ——and were on forms of the same type, were they not?

Mr. Carey: I object to that as immaterial. Now, as I said before, we have never had any demand made upon us for the production of anything.

Mr. Winter: May we see the contract?

The Court: Just let counsel finish his statement, Mr. Winter. [60]

Mr. Winter: Very well.

Mr. Carey: But we are willing to produce anything that counsel wants produced, even at this belated date, if he will tell us what it is that he wants.

Mr. Winter: Well, we would like to see the contracts, with the Alaska Pacific Salmon Company

(Testimony of Russell Mowry.)

which you say you are willing to produce, for the years 1937, 1938 and 1939.

Mr. Carey: I will produce them, and will do so in a moment, but I object to this witness being examined about contracts of a different company with which he had nothing to do in those years.

The Court: Well, as I understand the last question, it had to do with the contract prevalent in the industry, which might include employers other than those two who are involved in this proceeding—this lawsuit. In so far as the question relates to other employers in the industry, other than these two involved in this lawsuit, the objection is sustained. It is only with reference to these two employers that we are concerned. It is only what the contracts were of these two that the Court thinks are material.

Mr. Winter: These case were consolidated for trial, because they were based on the same facts and the same statements.

The Court: I believe that that statement is not necessary. The Court's last statement ought to take care of it.

Mr. Carey: I now have, and tender for inspection of counsel, the following 1937 labor agreements of the [61] Alaska Pacific Salmon Company:

First—a copy of a contract between the Alaska Pacific Salmon Company and the Alaska Fishermen's Union, covering southeastern Alaskan canneries;

Two—a copy of a contract between the Alaska

(Testimony of Russell Mowry.)

Pacific Salmon Company and the Alaska Fishermen's Union, covering what are known as the westward canneries;

Third—a copy of a contract between the Alaska Pacific Salmon Company, and in this particular copy, your Honor, the name of the Company—the blank is not filled in, and the Prince Williams Sound Fishermen's Union, covering certain employees of the Prince Williams Sound, Alaska, canneries.

Four—a copy of a contract dated April 7, 1937, between Alaska Pacific Salmon Company and the American Radio Telegrapher's Association.

The Court: For all operations, no matter in what locality in Alaska?

Mr. Carey: I assume so, your Honor.

The next is a copy of a contract, again the name of the company is blank, and I will mark it in the corner, "Alaska Pacific", between the Alaska Pacific Salmon Company and the United Brotherhood of Carpenters & Joiners, Local #1184.

The Court: And that also covers all Alaska localities?

Mr. Carey: I assume that that would cover all workmen of that particular Union, the Carpenters & Joiners.

The next is a copy of a contract, and the name again is blank, and I am marking it "Alaska Pacific", with [62] the Copper River and Prince William Sound Fishermen's Union, the contract being headed, "Company's—Fishermen's Union."

And the next and last of the 1937 contracts is a

(Testimony of Russell Mowry.)

copy of one between the Alaska Pacific and again the name of the company is absent, and I am marking it, and the Cannery Workers' and Farm Laborers' Union, Local 18257. That I think is what is ordinarily called the Filipino contract.

Now, I tender for the inspection of counsel the following copies of the 1938 contracts of the Alaska Pacific Salmon Company.

The Court: Do they coincide in that year with the ones that you have just mentioned for the previous year?

Mr. Carey: I cannot answer that, your Honor, because I have not had an opportunity to compare them, and in these instances, as before, where the name of the company is blank in the contract, I will write the name in the corner.

First is the agreement dated April 27, 1938 entitled, "Agreement for Southeastern Alaska", between the Alaska Pacific Salmon Company and the Alaska Fishermen's Union.

The next is an agreement between the Alaska Pacific Salmon Company and the Alaska Fishermen's Union, dated April 27, 1938, covering westward canneries.

The next is a copy of a contract dated April 29, 1938, with the Machinists' Locals 79 and 239 of the International Association of Machinists of Seattle, the contract being entitled, "Machinists' Agreement Locals #79 and #239." [63]

The next is a contract between the Alaska Pacific Salmon Company and the Seattle District

(Testimony of Russell Mowry.)

Council of Carpenters, the contract bearing date of April 30, 1938, and entitled "Carpenters' Agreement, Local 1184."

The next is a contract with the American Radio Telegraphers' Association, dated May 28, 1938.

The next and last is a contract between the Alaska Pacific Salmon Company and the Cannery Workers' and Farm Laborers' Union, Local #7, United Cannery, Agricultural, Packing and Allied Workers of America, C.I.O. The date of the contract is May 20, 1938, and the contract is entitled, "Agreement with Cannery Workers' and Farm Laborers' Union # 7, United Cannery, Agricultural, Packing and Allied Workers of America." And that concludes the 1938 contracts.

I now tender for the inspection of counsel the following copies of 1939 contracts of the Alaska Pacific Salmon Company. The first is a contract dated May 19, 1939 between this company and the United Cannery, Agricultural, Packing and Allied Workers of America, C.I.O. That date is May 19, 1939.

The Court: This is for what part of Alaska—does it state the part of Alaska to which it applies?

Mr. Carey: No, I think not.

The Court: I guess I had better get you to read the classifications of work that are covered.

Mr. Carey: This is a contract with the United Cannery, Agricultural, Packing and Allied Workers of America. That I think is what is commonly

(Testimony of Russell Mowry.)

known as the Filipino contract, and I think it is uniform throughout the territory. [64]

The Court: Do you think that the two contracts before this, covering the cannery workers, are the same thing as that?

Mr. Carey: I cannot go any further than this. I think they are probably substantially the same.

The Court: And cover Filipino workmen, you believe?

Mr. Carey: That is my understanding.

The Court: It may be a different union but covering the same type of workmen?

Mr. Carey: That is what I understand. But, as I say, I have not compared the contracts, so I cannot unqualifiedly state the differences, if there are any.

The next is a contract between the Alaska Pacific Salmon Company, dated April 27, 1939 and the Alaska Fishermen's Union, entitled "Agreement for Southeastern Alaska."

The next is a contract between the Alaska Pacific and the International Association of Machinists, Machinists' Local 79. The contract is dated May 1, 1939, and it is entitled "Machinists' Agreement, Local #79."

The next is a contract between the Alaska Pacific Salmon Company and the American Communications Association. The date of the contract is May 5, 1939. I assume that that is a new name for the radio operators. Glancing at the top of the contract it seems to be that.

The next is a contract between the Alaska Pacific

(Testimony of Russell Mowry.)

Salmon Company and the Seattle District Council of Carpenters, A F of L, Local 1184. The date of the contract is May 6, 1939, and the contract is entitled "Carpenters' Agreement, Local #1184."

[65] The next is a contract between the Alaska Pacific Salmon Company and the Alaska Fishermen's Union, dated April 20, 1939, and entitled, "Agreement for Westward Canneries."

These are all the contracts that I have been handed, and it has been reported to me that they are a complete set.

Now, I understand from Mr. Tegtmeier that that is the only complete set of these contracts—at least for two of the years—that are available, and to the extent that they are not needed in this case, I would like to withdraw them, and to the extent that they are material here, we would like the privilege of either later substituting copies or the understanding that when they are no longer needed, they can be withdrawn.

Mr. Winter: I take it by your statement, Mr. Carey—or will you concede that this company, or both companies have similar contracts in the area in which they fish?

Mr. Carey: I am sorry, Mr. Winter, but I do not find myself in any position to make such a stipulation. As I say, I was not given any notice in advance, and if counsel desired these contracts, I would have been glad to produce them, and compared them, and made any stipulations I could, but

(Testimony of Russell Mowry.)

I have learned long ago, your Honor, not to make stipulations about contracts that I have not read.

The Court: Now, with reference to those that have been produced——

Mr. Winter: (Interrupting) I want them in evidence as copies of the contracts. I am not trying to prove any [66] facts except the contracts which you by your statement admit are the company's contracts which you had with these men.

Mr. Carey: I want the record to show, your Honor, that I am not admitting anything by my statement except the things that I have stated.

The Court: Let the record show that, and try to avoid making unnecessary statements, Mr. Winter. Let each one of those three files be marked with a separate identification mark. Is that satisfactory?

Mr. Carey: Yes.

Mr. Winter: When they are marked, we have no objection that they remain in court, and that they may be withdrawn, and if any contingency arises, that copies may be substituted. It is rather difficult to get——

The Court: (Interrupting) Very well. That is sufficient.

Mr. Carey: For the purpose of the record, your Honor, I want to object to the introduction of these in the absence of any showing as to the materiality of any one of these contracts to the matter in controversy between the Alaska Pacific Salmon Company and the Government.

(Testimony of Russell Mowry.)

The Court: Then I will have to hear further on that. Do you have some witness that you wish to inquire from concerning their materiality?

Mr. Winter: Well, if your Honor please, they are material right on the face of them, because the sole question here is what wages—it is incumbent upon the Plaintiffs to show what wages were paid, and that they were erroneously paid. Now, if it is shown under the contract that it was agreed to furnish board and room, or [67] in lieu thereof, an allowance, the materiality—

The Court: (Interrupting) Will you point out in the exhibit somewhere where it does show that?

Mr. Winter: Yes, your Honor.

The Court: And then the court will consider the question.

Mr. Winter: May we have these contracts marked for identification?

The Court: They may be marked for identification.

(Whereupon file containing 7 1937 contracts between Alaska Pacific Salmon Company and various unions marked Defendant's Exhibit A-2 for identification; file containing 6 contracts between Alaska Pacific Salmon Company and various Unions covering 1938 operations marked Defendant's exhibit A-3 for identification; and file containing 6 contracts between Alaska Pacific Salmon Company and various unions covering 1939 operations marked Defendant's Exhibit A-4 for identification.)

(Testimony of Russell Mowry.)

Mr. Winter: I will point it out in A-2.

The Court: I will look at them in just a moment. Is there anything on the outside to show what year they are for?

Mr. Carey: Yes, there is.

The Court: I note that A-2 is for 1937. Are those the contracts that you mentioned some time ago, Mr. Carey?

Mr. Carey: Yes.

The Court: And 1938 is A-3, and 1939 is A-4.

Mr. Winter: In the first contract, it provides that there shall be furnished to the men three full meals a day from the mess house; also it provides that in the event—in several places it is also in the contract [68] in the event that if the boat should be late on leaving or in discharging, they should get a sustenance of \$3 a day, and all such items as that.

The Court: Will you take one of the contracts and refer to the page and paragraph?

Mr. Winter: Yes. In the first paragraph of the Alaska Pacific Salmon Company's contract for southeastern Alaska, a part of A-2——

The Court: A part of A-2 for identification which relates to the year 1937?

Mr. Winter: Yes.

The Court: All right.

Mr. Winter: And that provides on page 1——

The Court: (Interrupting) In what paragraph?

Mr. Winter: Well, in paragraph 13 it says:

(Testimony of Russell Mowry.)

“Fresh meat, fruit and vegetables shall be furnished whenever obtainable.”

And then in paragraph 16, it says: “All men to be furnished first-class transportation or transportation on a tender which shall be considered satisfactory, provided that there shall be a regular bunk for every person aboard.” That is on page 3.

The Court: I would rather not have anything except lodging and boarding.

Mr. Winter: Well, the contract refers to it in so many different ways that it is impossible to say—well, here is one in paragraph 36.

The Court: On what page?

Mr. Winter: On page 7. “The Company, through its superintendent or agent in charge at any time may [69] discharge any party of the second part for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge. However, if any employee is found to have been arbitrarily discharged, he shall be paid the wages he would have normally earned during the period lost by reason of such wrongful discharge, plus \$1 per day for board, provided such employee paid board and was not otherwise employed during such period; all subject to adjustment by reason of wages such employee earned from time of dismissal.”

That is, upon dismissal, they agree to pay for board.

And then paragraph 48, page 8, provides:

(Testimony of Russell Mowry.)

“The mess house crew shall prepare and serve the three regular meals each day. During the canning season, if coffee is served at other than regular meal hours, the mess house crew shall prepare same without overtime. If, at midnight, any cook is required by the superintendent, foreman or captain in charge to prepare and serve an additional full hot meal for members of the crew working at night, he shall receive three hours’ overtime.”

The Court: It does not say at whose expense.

Mr. Winter: That is what the Alaska Pacific Salmon Company agreed to do.

The Court: Let me see that, please. I imagine that there is some one person who is familiar with these contracts who can point out more definitely any provision herein which sets an obligation on the part of the employer to provide or pay for lodging and board.

Mr. Winter: I beg your pardon? [70]

The Court: I rather suspect that there is some one person who is familiar enough with these contract forms to be able more quickly to point out the pertinent parts of it that relate to the obligations, if any there are, on the part of the employer to provide lodging and board. I wish that you would find that out. This is rather an isolated condition. This is not the usual working condition that you referred to in paragraph 36. This is a condition that comes into operation upon the discharge of some employee, I believe.

Mr. Winter: Yes, your Honor. If there was not

(Testimony of Russell Mowry.)

an obligation to furnish him board and room, during the time that he is working, certainly there would not be an obligation to do so during the time that he is discharged. That is a protection to him, that he should still get his board and lodging. These union contracts are in rather——

The Court: (Interrupting) The ruling is reserved. Proceed with something else until you get somebody who is more familiar with it, and after you do, I will be glad to consider it again.

Mr. Winter: We haven't had copies of these contracts until just now.

The Court: I know. Proceed with something else then.

Q. (Mr. Winter, continuing) Did your company have an agreement with the union to furnish board and lodging to the cannery workers?

Mr. Carey: Just a minute. I object to that for the reason that I have already stated, that the contracts are the best evidence. We are prepared to produce them as soon as they can be produced. Counsel has made no demand [71] for them up to now.

The Court: That objection is sustained.

Mr. Winter: All right.

Q. (Mr. Winter) Did your corporation have similar contracts or similar labor agreements with your employees in the areas covered by Exhibits A-2 to A-4, inclusive.

Mr. Carey: I object to that, your Honor, for the reason that so far this witness has not testified that he has any familiarity with the 1937, 1938 and 1939

(Testimony of Russell Mowry.)

contracts of the Alaska Pacific Salmon Company. We are prepared to admit or to produce the contracts of the Pacific American Fisheries, and when produced, they will speak for themselves.

The Court: The objection is overruled. If this witness knows, he may answer that question.

Mr. Carey: He might guess at it, but he cannot know.

The Court: I believe that this witness is sufficiently intelligent to be able to say whether or not he knows or to state what he does know.

Q. (Mr. Winter) Let me ask this first: you had a cannery in southeastern Alaska, did you not, Mr. Mowry? A. Yes.

Q. Did you have a union agreement with the cannerymen, trapmen, gear scow men, web and wire men, beach men, utility men and mess house employees? A. Who is this signed by?

Q. Did you have a contract with that Union?

A. You haven't stated any union yet. There is a CIO Union and there is an A F of L Union.

Q. With the Alaska Fishermen's Union? [72]

A. Yes, to my knowledge we did.

Q. And was it similar to the first contract appearing in A-2?

Mr. Carey: I object to that as immaterial.

Mr. Winter: I will reframe the question.

Mr. Carey: Just a minute, please.

Mr. Winter: I have withdrawn the question.

Mr. Carey: All right.

Q. (Mr. Winter, continuing) Was it on the

(Testimony of Russell Mowry.)

same form as the first contract, or the contract so designated in Defendant's Exhibit A-2?

Mr. Carey: I object upon the same ground, and for the same reason, that the contract when produced is the best evidence, and we are willing to produce it.

Mr. Winter: I am not asking him to state anything that is in the contract. I am just asking him if he had such a contract.

Mr. Carey: That does ask him to state everything in the contract. When he produces a contract from one company and asks him if the contract of another company is identical with it, why, of course, that is asking him to state everything in the contract.

The Court: That objection is overruled.

A. I would say that it is a similar form.

Q. (Mr. Winter) It is the same form with a different——

A. (Interrupting) I would not be absolutely sure.

Mr. Carey: I move to strike the answer. If the witness knows, he can state positively.

The Witness: No.

Mr. Carey: He should not be guessing at it, even if he [73] is my witness.

The Court: I think that the motion should be granted in view of the witness' last remark that he cannot be absolutely sure.

Q. (Mr. Winter, continuing) You cannot be absolutely sure?

(Testimony of Russell Mowry.)

A. That is signed by the Alaska Pacific Salmon Company. The last page may be different.

Q. Who prepared the contracts? Did the Unions prepare them?

A. In those years, they did, yes.

Q. And all in the industry signed the same contract?

A. I would not say that.

Q. Don't you know that as a matter of fact, you conducted negotiations jointly with the Unions for these contracts?

Mr. Carey: I object to that.

The Court: This relates to another matter not related to the contract. It relates to the witness' part in negotiations. That objection is overruled.

A. You will find 1937 and in 1938 that the Unions conducted their own negotiations with the different canning companies, and there might be different contracts for the same Union. Now, in 1939——

Q. (Mr. Winter) Well, was there any different contract with respect to board and lodging which is to be furnished?

A. I cannot tell you without looking at our agreement.

Q. Well, isn't that——

Mr. Carey: I submit that this is an answer.

The Court: Yes.

Q. (Mr. Winter, continuing) Did your company have an agreement with the same Union, covering tendermen, fishermen, trapmen, utility men and cooks, with the Alaska Fishermen's Union, for

(Testimony of Russell Mowry.)

the Westward Canneries that you had, or did you have a [74] Westward Cannery?

A. Yes, we had a Westward Cannery—we had two of them.

Q. I want you to look at this contract and tell me whether or not you had a contract——

The Court: (Interrupting) I think that the witness has already indicated a lot of knowledge of detail, which makes it inadvisable to take up any more of the time of the Court to ask him about that.

Mr. Winter: All right, your Honor.

The Court: At least until the witness has had a chance to compare this form with his own form, if and when he is able to get hold of his own company's form, he should not be called upon to answer that.

Q. (Mr. Winter) Did you have the same type of contract with the Prince William Sound Fishermen's Union?

Mr. Carey: I make the same objection, upon the ground that that question now is right in defiance of your Honor's ruling a moment ago.

Mr. Winter: I am just asking him whether he had such a contract.

Mr. Carey: We will produce all of them, we said.

The Court: Objection sustained. In view of the witness' last two or three answers, I think that the Court ought to give him an opportunity to look at his own company's contracts.

(Testimony of Russell Mowry.)

Mr. Winter: In view of that statement, we would like to ask for a continuance until they can be produced.

The Court: Maybe there is some other evidence that can be produced in the meantime, Mr. Winter. I will see if there is, before acting on this motion. Do you have anything further? [75]

Mr. Winter: Not until we get the contracts. I would like to have the Court give me permission to reserve my cross examination.

The Court: The Court will give you that permission to reserve it. Do you have any further questions that you want to ask, Mr. Carey?

Mr. Carey: No.

The Court: You may be excused, temporarily, Mr. Mowry.

(Witness excused)

The Court: Call your next witness.

Mr. Carey: We rest.

Mr. Winter: Before you rest, we would like to recall Mr. Tegtmeyer.

The Court: He does not seem to be here right now. Is Mr. Tegtmeyer present?

Mr. Carey: He does not seem to be here right now.

Mr. Winter: Perhaps counsel will stipulate that these are the contracts of the Alaska Pacific Salmon Company without us waiting to call Mr. Tegtmeyer, unless you want to be captious about that.

Mr. Carey: I move to strike that statement.

The Court: Mr. Winter, I want to say this, that if you make another remark like that, the Court is going to hold you for contempt. There was not a thing happened that justified you to make that remark. I just cannot have that in this court room.

Mr. Winter: I am sorry about the remark, but it seems to me, if the Court please, that this is such a minor matter that it should be before the Court. We are not concerned with a criminal case, if your Honor please. [76] We want the true facts. We want to have what contracts were entered into so that the Court may determine the real issue in this case. Ordinarily, in an income tax case——

The Court: (Interrupting) Mr. Winter, your present statement appears to the Court—well, while doubtless made in entire good faith on your part, it amounts to nothing more than popping off steam.

Mr. Winter: I am sorry.

The Court: It is not necessary to make it. If you wish to present a motion or make a request to the court, I will consider it.

Mr. Winter: We will request a continuation at this time in order that we may call the parties to the contracts covering both companies so that we can get them all here, and we will have to get subpoenas out to get them here, if the Court please.

The Court: Do you have any objection, Mr. Carey?

Mr. Carey: No, I have not, your Honor. If counsel will indicate to me what parties or witnesses he wants, I will undertake to get them here without the necessity of a subpoena. I cannot guarantee

anything, and I think, your Honor, that he will have very great difficulty subpoenaing the operating officials now, because the operating season is on. Most of them are in Alaska. That is the reason I had these two men here. But if counsel wants a continuation, he certainly encounters no objection from us.

The Court: You expect to inquire further from Mr. Tegtmeyer? [77]

Mr. Winter: Yes, your Honor.

The Court: Do you wish to try to get him on the phone, or do you think that you might do that possibly within a few minutes and make any further progress this afternoon?

Mr. Winter: May we have a recess, your Honor?

The Court: Yes.

Mr. Winter: For ten minutes?

The Court: The court will now be at recess for ten minutes.

(Recess.)

The Court: You may proceed.

Mr. Winter: We have no further cross examination of the witness.

The Court: All right. The witness is already excused from the stand.

Mr. Winter: Do you rest?

Mr. Carey: We rest.

(Thereupon, the Plaintiffs rested their case.)

Mr. Winter: At this time we move to dismiss these consolidated cases on the ground that the

plaintiffs have failed to state a cause of action or to prove a cause of action in this case. The Plaintiff, the Pacific American Fisheries, Incorporated, alleges in Paragraph 2 of this complaint:

“To operate said canneries efficiently or at all, it was necessary that the Plaintiff in advance of the fishing and operating season transport practically all of its help from Bellingham, and Seattle, Washington, and from Portland, Oregon, to its several Alaska canneries and return them to the several ports of embarkation at the end of the fishing and operating season. During the fishing and [78] operating season, it was necessary that the plaintiff as a part of its operations furnish such employees with lodging and sustenance at the canneries at which they were employed”,—which could be nothing but compensation, and they furnished it. They furnished it to their employees. It is not alleged that it was a gratuity.

The Court: And you admit that in your responding pleading?

Mr. Winter: Well, for the motion, of course, we have to admit it. It is admitted for the purpose of the motion. This is a motion based entirely upon the proof and the pleadings in this case.

The Court: I would like to know as a matter of fact whether your answer admits that allegation.

Mr. Winter: I think that we filed a general denial to that paragraph of the complaint, our general denial of course, running to the fact—we said that we had no information or belief as to the

falsity or truth of the allegation. I think that that is the answer—our answer.

Paragraph 2. "The defendant has no information sufficient to form a belief concerning the allegations contained in paragraph 2 of Plaintiff's complaint, and therefore denies the same."

But it must be admitted for the purpose of the motion. This is a motion to dismiss on the failure of proof. The burden is not upon the defendant to prove anything if the plaintiff has failed to prove a case. And they admit that they furnished their employees with lodging and sustenance. Their only contention is that it would have been impossible for the plaintiff to have operated its [79] canneries unless they did furnish their employees with this additional form of compensation, which we contend it is.

The Court: The motion is denied with leave to renew the point in any appropriate way in other appropriate stages of the proceedings.

Mr. Winter: Yes, your Honor. Now, we have a witness that we would like to call out of turn.

The Court: You feel that the Government's position is sufficiently covered by what has already been said without the necessity of an opening statement?

Mr. Winter: I think so, Your Honor. The only issue is whether or not board and lodging were furnished, and they admit that board and lodging was furnished, or additional compensation.

The Court: Very well. Proceed.

DEFENDANT'S CASE:

AUGUST BUSCHMANN

called as a witness on behalf of the Defendant having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Winter:

Q. Will you state your name, please?

A. August Buschmann.

Q. Where do you reside, Mr. Buschmann?

A. Seattle. [80]

Q. You were the chairman of the Labor Committee of the Alaska Canneries' Association during 1936, 1937 and 1938, wern't you?

A. Well, I was chairman of the negotiating committee.

Q. You were chairman of the negotiating committee?

A. Yes, sir. But I do not think in 1939.

Mr. Carey: What year is that?

Q. (By Mr. Winter) What year did you start?

A. I am not positive now whether it was 1935 or 1936.

Q. You are not positive now whether it was 1935 or 1936?

A. That is right, but I think it was one of those years.

Q. And how long did you hold that position as—

A. (Interrupting) Oh, I worked on that for two or three years. I think 1937 and 1938.

(Testimony of August Buschmann.)

Q. And in 1938, you were a member of the Fact Finding Board of the Canned Salmon Industry, weren't you? A. Yes, sir.

Q. Who were the other members of that Fact Finding Board?

A. Mr. Smith and Mr. Melnikow of San Francisco.

Mr. Carey: Pardon me.

The Witness: Mr. Smith and Mr. Melnikow of San Francisco.

The Court: Do you know the first names of either one of those men?

The Witness: No.

The Court: Who was the chairman of that Fact Finding Board?

The Witness: Mr. Smith was the chairman.

The Court: What business was he engaged in, so as to identify him? [81]

The Witness: He was an attorney in San Francisco.

The Court: Do you know what firm he was connected with?

The Witness: No. I think that he was by himself.

The Witness: I think that it was in the Balfour Building.

Q. (Mr. Winter, continuing) Do you know Mr. Melnikow's initials?

A. Henry T. Melnikow.

Q. And who was Mr. Melnikow?

A. I think that he was—I think that he had an

(Testimony of August Buschmann.)

auditing arrangement, as I recall it now. I didn't know him intimately.

Q. What was the occasion, or how was that Board formed, Mr. Buschmann?

A. How was the Board formed?

Q. Yes.

A. Well, during our negotiations for the 1938 labor scale, the packers and the unions could not agree, and it was decided by the packers—let me see now,—well, we just decided, or agreed, rather, to form a fact finding board.

Q. And whom did you represent on that Fact Finding Board?

A. I represented the packers.

Q. What position did you hold with the packers in their Association at that time, and what was the name of their Association?

A. Well, I didn't hold any particular office, or did not have any particular title in their association at that time.

Q. Well, were you Chairman of their Labor Committee? [82]

A. Yes, I was chairman of their Labor Committee.

Q. And how long did you remain as chairman of the Packers' Labor Committee?

A. Two or three years.

Q. Was that in 1940?

A. It was in 1935, 1936 and 1937, and 1938, possibly. I am not certain now. Just three or four years.

(Testimony of August Buschmann.)

Q. And who on that committee represented the Employees' Unions? A. Mr. Melnikow.

Q. And did you and Mr. Melnikow appoint the third member of the Board? A. Yes.

Q. And you conducted, or did you conduct hearings to determine the facts, or what did you do?

A. Yes, we held some hearings. We heard anybody that wanted to be heard.

Q. I see. And what did you do with respect to calling upon the Canned Salmon Industry with respect to the costs?

A. Well, most of them furnished us statements of their operations—covering their operations.

Q. Did they furnish you a report of their 1937 operations? A. I think that they did, yes.

Q. Did you make a ruling in accordance with the agreement to mediate your differences?

A. Yes, sir.

Mr. Winter: I will have this marked for identification.

(Whereupon, copy of report of findings of Fact Finding Board marked Defendant's Exhibit A-5 for identification.)

Q. (Mr. Winter) I will show you what has been marked for [83] identification as Defendant's Exhibit A-5, and I will ask you to state what that is.

A. Well, it looks like a copy of the findings of the Fact Finding Board.

Q. Was that report mimeographed, to your knowledge? A. Yes.

(Testimony of August Buschmann.)

Q. Do you have a copy of it in your files?

A. I did have. I do not know whether I have it now or not.

Q. You do not know whether you have it now or not? A. Yes, sir.

Q. You say the packers of the Canned Salmon Industry in Alaska had differences with their employees in 1938 concerning the wages to be paid during the approaching season?

A. That is right.

Q. What was the situation? Did they want a lower or a higher scale for that year?

A. You mean the employees?

Q. Well, what was the difference, generally—so that we can understand it.

A. Well, the packers wanted to reduce the scale on account of the deplorable conditions in the Salmon Market at that time. They felt justified in asking for a substantial reduction in the rate of pay for that coming year.

Q. Based upon Defendant's Exhibit A-5, were master contracts drawn up with the various unions relative to the pay scale which was agreed to in that report?

A. Yes, I think there was, yes.

Q. And does this report—what does this report show—does this report show the scale which was agreed upon between labor and industry as to fishing in Alaska? [84]

A. Well, it not only applies to fishing, but it also applies to other kinds of employment besides fishing.

(Testimony of August Buschmann.)

Q. By the canneries? A. That is right.

Q. Of employees by the canneries, is that right?

A. I think that it covers practically all. There were some exempt that did not come under the findings of the Fact Finding Board.

Q. Would you just state to the Court the companies which were subject to this Board's report, and who agreed to this award to be made by you as representing the Canning Industry, Mr. Melnikow representing Labor, and the other gentleman representing the third party?

Mr. Carey: I presume that the document itself shows that.

Mr. Winter: Well, we will offer it in evidence, if the Court please.

The Witness: There is——

Mr. Carey: (Interrupting) Just a minute, Mr. Buschmann.

The Court: Do not read from it, Mr. Buschmann.

Mr. Carey: Does the document itself show who the packers were that you were representing?

The Witness: Yes.

Mr. Carey: Well, then, that is the best evidence.

Mr. Winter: Well, we will offer it in evidence.

Mr. Carey: I object at this time, because it is not yet shown to be material to this present controversy. I have not seen it, but from what counsel says, he apparently is offering this at this time because it has some relation to the 1938 contracts that were made in that year. [85]

The Court: Will you point out——

(Testimony of August Buschmann.)

Mr. Carey: (Interrupting) The objection that your Honor suggested as to the 1938 contracts would also apply to this. Until the contracts have been shown to be material, or some part of them shown to be material, then what preceded the contract would not be material.

The Court: Will you mark in the margin the part that you feel is material in this action, or in this trial, and submit it to opposing counsel? Will you mark that on the margin, and you might give me the citation of that marginal reference?

Mr. Winter: Well, your Honor, the materiality of this document is that this document in conjunction with the other contract will show the whole picture. I cannot put one document in to prove every situation. Your Honor asked me with respect to the 1938 contracts, as to whether they were material, and on that, well, I attempted to point out, if the Court please, that that award which was agreed to was binding upon every party represented by these members on the Board, and the fact that it was binding upon both of those corporations during 1938 ties in with this paragraph of the contract with the cannery workers, of April 28, 1938.

The Court: Could you now give me the page and paragraph that you have given to counsel?

Mr. Carey: The paragraph that counsel marked and handed to me appears under the title, "Cannery Workers, all districts except Southeastern Alaska", at the bottom of page 4 of this document that has been marked as I recall for identification. [86]

(Testimony of August Buschmann.)

The Court: Now, have you had a chance to consider its materiality?

Mr. Carey: Yes, your Honor.

The Court: Do you still make that objection?

Mr. Carey: Yes, except that I make it stronger because having read it, it now appears that it has no material value, if that is the paragraph that counsel has in mind.

Mr. Winter: I will show that it is material——

The Court: (Interrupting) I think that it would be better to reserve ruling upon it, because it is possible that I may——

Mr. Winter: (Interrupting) Of course, I want to ask the witness from the document what is meant by a certain term in there, and tie it up with the—you see, the Board is referring to the basic wage. I will ask this question, if your Honor please.

Q. (Mr. Winter) Was there anything considered by the Board excepting the basic wage? By that, I mean, did the Board consider any question of the reasonableness of board and room, or anything of that nature?

Mr. Carey: Just a minute. I object to that upon the ground that the decision of the Board being in writing, that it the best evidence of what that decision was, and it speaks for itself.

The Court: He does not ask him to state what that decision was. He is asking him concerning the fact of a decision or not. The objection is overruled. He may answer.

(Testimony of August Buschmann.)

A. What is the question?

The Court: Read the question. [87]

(Last question read)

A. Well, I do not think that board and room were discussed particularly, but by basic pay there, I think that we meant the monthly pay excluding overtime.

Q. (Mr. Winter, continuing) You mean the cash received?

A. Well, cash received, excluding the overtime.

Q. Yes. Was there any dispute or any difference between the canners' association and the employees of the Union with respect to board and room being furnished.

Mr. Carey: I object to that as immaterial. Here you are dealing with a decision that amounts to a Board of Arbitration, and of course, the decision being in writing, it speaks for itself. What they did not put in writing is, of course, no part of the decision, and it assists nobody. It is merely hearsay.

The Court: That objection is overruled. Until he asks for the contents of the document, it is not objectionable on the ground that you have mentioned. He may answer.

The Witness: What was the question?

(Question read)

A. No.

Q. (Mr. Winter) Was that matter considered—was the board and room considered in arriving at the pay scale—the basic pay scale that was considered by the Board?

(Testimony of August Buschmann.)

Mr. Carey: Now, just a minute. On the basis of the witness' last answer, I object to the document, and I object to any further examination concerning it, because any testimony here now as to a matter that was not in dispute, and that is what Mr. Buschmann says, cannot possibly be material in this case. This Board, according to Mr. [88] Buschmann, was appointed to consider things that were in dispute. Their decision as to matters in dispute, I believe, is represented by the document.

The Court: In view of the witness' last two answers, Mr. Winter, it seems to me that he has excluded any knowledge of them, which is the answer called for by your present question.

Mr. Winter: If the Court please, I think that your Honor misunderstands.

The Court: (Interrupting) I may have. Will the reporter read the last two questions and answers, and the present question?

(Questions and answers read)

Mr. Winter: I probably confused the Court and counsel both. I will reframe the question.

Q. (Mr. Winter, continuing) What I meant, was there any dispute between the employers and the employees with respect to board and room—with respect to the type of board and room that had previously been furnished, and were the Unions demanding a different type of board and room, or a different deduction where they did not accept board and room from the company?

(Testimony of August Buschmann.)

A. I do not believe that that came up in the fact findings at all.

Q. In considering the basic pay and arriving at your award, did you or did you not take into consideration the fact that in some instances, and in most instances, in fact, in the remote parts of Alaska, board and room were being furnished by the Company?

Mr. Carey: I object to that, that a matter that was not considered cannot possibly be considered material here. [89] The document if it is material in any respect speaks for itself when and if introduced in evidence. It has not been offered as yet, but simply marked for identification.

The Court: There is something about the answers given to the witness to the previous questions that makes me think that this is covered by the preceding questions and answers. Objection sustained.

Mr. Winter: Well, I will put it this way, your Honor——

Mr. Carey: (Interrupting) Putting the same question in a different way, I submit, your Honor, does not overcome the objection.

Mr. Winter: I will submit it to your Honor, and you can rule on it.

The Court: Sometimes any one of us at a given moment might not be able to state the thought in language that is apt. We might state it in language that might seem objectionable, and the question put in a different form might seem to meet the objection. Proceed.

(Testimony of August Buschmann.)

Q. (Mr. Winter, continuing) Mr. Buschmann, what was the question submitted to the Board for consideration, and the answer which the Board was to consider, and you may use that to refresh your memory if you care to.

Mr. Carey: He does not have to refresh his memory from anything. The document speaks for itself, doesn't it?

Mr. Winter: I object to this ever stopping on the question before the witness can even get a chance to answer it.

The Court: That objection is not sustained of yours. If you have not finished your question, I will ask counsel to wait until you have finished your question, and then [90] he may register his objection. Have you finished the question?

Mr. Winter: Yes.

The Court: Read the question.

(Last question read)

The Court: I would suggest that you strike the question and restate it.

Mr. Winter: Yes, I will do that, your Honor.

Q. (Mr. Winter, continuing) Mr. Buschmann, will you just state to the Court what question, under the terms of the agreement setting up the Board, the Board was directed to answer?

Mr. Carey: Just a minute.

Q. You may use that document to refresh your memory.

(Testimony of August Buschmann.)

Mr. Carey: May I look at the document for a moment before I make my objection on the question?

The Court: Yes.

Mr. Carey: As I understand it, he is asking Mr. Buschmann as a member of the Board to state what question was submitted to the Board and what the Board did.

The Court: Just let us see what the question is. Read the question.

(Question read)

Mr. Carey: Well, the report shows why the Board was constituted, and what it was constituted for, and what the question was that it was trying to settle. So if the findings are material, the document speaks for itself.

Mr. Winter: We submit, if the Court please, that the document does not show any such thing, as we expect [91] to elicit from this witness. What we want from this witness, if the court please, is that we want him to tell us what question the Board was constituted to answer, and whether or not in arriving at that answer it took into consideration, which may or may not be within the report, the question of whether or not the award was reduced by virtue of additional compensation having been made in the way of board, room and sustenance.

Mr. Carey: Now, I make the objection——

The Court: (interrupting) Objection sustained.

Mr. Winter: We want to re-offer this exhibit, if the court please, because I want to ask him what he

(Testimony of August Buschmann.)

meant by a statement contained therein. After all, we have——

The Court: (Interrupting) If you will point out some part of it that is material in these issues, I will be glad to look it over.

Mr. Winter: I was referring to the Cannery Workers and where reference is made to basic pay.

The Court: What page is that on, and what paragraph? Let me see it.

Mr. Buschmann: I will hand it to the Court. (Handing document to the Court). It is on page 4, in the last paragraph, under the Summary.

The Court: Objection sustained.

Mr. Carey: That is the same thing that came up before.

The Court: And the court understood that you were renewing the same objection.

Mr. Carey: Oh, yes, sir; because it is the same offer.

Mr. Winter: I will ask permission to renew my offer, [92] and if I may, I would like to explain the purpose of why I think that it is material, and why I think that the question I ask the witness is material and he should be allowed to answer the question.

The Court: You may do so.

Mr. Winter: The witness is now testifying that they did not consider only the cash remuneration, but the report also shows under that particular exhibit that, as the result in the reduction of per month basic pay, and I want to ask the witness what the committee meant by that exhibit. It seems to me that

(Testimony of August Buschmann.)

if the committee considered—in view of the witness' answer—if the committee considered that this was just merely basic pay and not the full compensation which was being paid to these employees——

The Court: (Interrupting) Objection sustained.

Mr. Winter: Note an exception.

The Court: Allowed. If, later on, in connection with some other testimony the materiality appears, I will be glad to hear your re-offer.

Q. (Mr. Winter, continuing) I will show you, Mr. Buschmann, what has been marked for identification Defendant's Exhibit A-3, and particularly the contract or agreement between the Alaska Pacific Salmon Company, which is in blank, dated April 27, 1938—I will strike that.

Mr. Carey: Your Honor, may I make a suggestion that possibly will save time on this matter?

The Court: Yes, you may.

Mr. Carey: Now, I have made the best inquiry I can, and I find that there are a number of contracts at the PAF covering the three years in question here—a quite a [93] lot of them. I do not know how long it will take to assemble them. The only thing that I can do is to telephone to Bellingham and try to get somebody who can sort them out and send them down here by special messenger. I haven't the slightest idea how many there may be. I think that it would save time if your Honor would adjourn at this time and let me start that search in Bellingham. In the meantime, I have no objection whatever to letting Mr. Winter take these Alaska Pacific contracts

(Testimony of August Buschmann.)

to his office if necessary, and examine them, and then when he comes back, be prepared to tell us which ones he considered to be material and which ones he does not.

I am looking forward to this situation, your Honor, and I know that your Honor won't misunderstand me when I say that it is conceivable, of course, that this case might go to the Circuit Court of Appeals at the instance of one party or the other. Obviously, it is desirable not to load this record up with a great number of contracts which may turn out to be utterly immaterial, because the printing bill is a matter to be considered here. So I think that counsel, after these contracts have been turned over to him, ought to examine them and find out which ones he thinks are material, and advise the court which ones he thinks are material, and then I can either object or not object as seems to me proper.

Mr. Winter: Of course, our position is that every one of these contracts is material, because they are the contracts of employment by which these employees were paid.

Mr. Carey: Of course, your Honor has indicated that [94] you do not go that far with counsel.

The Court: The thought that I had in mind, Mr. Carey—possibly your point is one that could be determined after the trial was concluded, but I am interested more now in having somebody in the case able to point out with respect to the instruments that are not yet received in evidence but have been of-

(Testimony of August Buschmann.)

ferred and the ruling reserved or the ruling denied, or the offer denied, rather, the particular paragraphs which relate to the provisions respecting furnishing by the employer of this lodging and board, and the reason for furnishing them and whether they should be treated as such or not.

Mr. Winter: I have here, your Honor, paragraph 20 which answers your Honor's question.

Mr. Carey: Of which contract?

The Court: And which page?

Mr. Winter: That is paragraph 20 of the contract with the Cannery Workers for the year 1939, and it is a part of Defendant's Exhibit A-4.

Mr. Carey: Of course, that is only one of about 20 contracts covering 3 years. Now, if that is the only contract that counsel is interested in, then we ought to take that up and find out whether it is admissible or not, and not load the record up with a lot of others that have no relation to this matter at all.

The Court: This states: "three wholesome meals". This is something that I have not seen before. That is in paragraph 20, page 5 of the form of contract of 5-19-39, with the Alaska Pacific Salmon Company. Now, where do you find out what group of employees this contract relates to? [95]

Mr. Winter: That is on the first page. It relates to cannery workers. I think it states "Cannery Workers" on that page.

The Court: Yes.

(Testimony of August Buschmann.)

Mr. Winter: Then we will have the master contract with all the unions——

The Court: You are interrupting the Court. Let the Court finish.

Mr. Winter: I am sorry.

The Court: This language is something that the Court has not previously noticed. This is in paragraph 20 on page 5, "The Company will furnish three wholesome and adequate meals each day during transportation and while at the cannery. Also suitable living quarters while at the cannery, and bunk, spring and mattress, but employee shall furnish all his other bedding, clothing and personal effects, and, excepting for his own negligence, the Company shall not be responsible for any damage to or loss of any of the employee's bedding, clothing, or personal effects from any cause whatsoever."

The Court feels that that makes the contract material evidence in this case. Does your objection run to the point that the contract lacks proper authentication and identification, Mr. Carey?

Mr. Carey: No, your Honor. I have tendered them to the Court as copies, and of course, I would not put myself in a position of tendering something as a copy and then make the objection that it was not.

The Court: Do you have any objection to this paragraph 20—the part of Paragraph 20 just read by the Court? [96]

Mr. Carey: No, but I do not think——

(Testimony of August Buschmann.)

The Court: (Interrupting) You do not think that it is material?

Mr. Carey: I do not think that it is material. I have no objection to it——

The Court: (Interrupting) I think it is pertinent or material.

Mr. Carey: My suggestion was not in the form of an objection. It is that counsel ought to point out to the court which contracts he claims contains anything that he thinks is material, and then if your Honor finds anything in that particular contract that you think is material, then I will either object to it or I won't.

The Court: Well, here is one of them that the Court regards as material.

Mr. Carey: I am perfectly willing to have that particular one in because I think that it is my way.

The Court: Let the record show which one that is, will you please?

Mr. Winter: That is the contract dated 5-19-39, agreement with the United Cannery, Agricultural, Packing and Allied Workers of America.

The Court: You say "with". The agreement of whom with?

Mr. Winter: That is the way it is entitled. It is an agreement between the Alaska Pacific Salmon Company, a corporation——

The Court: (Interrupting) All right.

Mr. Winter: And the United Cannery, Agricultural, Packing and Allied Workers of America, in behalf of Local—and that is blank. [97]

(Testimony of August Buschmann.)

The Court: And it is now a part of Defendant's Exhibit A-4, isn't that right?

Mr. Winter: That is a part of Defendant's Exhibit A-4, yes.

Mr. Carey: If counsel wants to offer that as an exhibit, I will have no objection to it.

The Court: The court rules on this now that this one is admissible, but I am not going yet to admit it until I see what others in that same file or exhibit are.

Mr. Winter: Well, your Honor, every one of them—I think that when we get the master contract upon which these contracts are based, which covers the whole industry, and we will have them here tomorrow——

The Court (Interrupting): I am going to take a continuance now until tomorrow of these proceedings, and I am going to ask you to be prepared tomorrow to point out which one has in it a provision similar to that, or any other provision that you claim makes it material in this action. Call that to the court's attention, unless you agree on it before that is done. Maybe if you call those things to the attention of your opponent, he may agree with you which ones are in that class, and which ones are not.

Mr. Carey: I would be glad to attempt to do that, but I have so many other things to do that I cannot be in two places at once.

The Court: If you gentlemen cannot agree which ones have such clauses in them, why, I will take

(Testimony of August Buschmann.)

the whole group of them up and look at them at the place where counsel requests me to look at them.

[98]

Mr. Winter: As I say, we think all of the contracts which are contracts of employment here, are——

The Court (Interrupting): This matter is continued now until tomorrow morning at ten o'clock, and have your witness and your proof here at that time.

Mr. Winter: May we withdraw these exhibits now so that we won't have to prepare an order to withdraw them?

The Court: Well, what does counsel think about it? Is it so stipulated, and you won't hold the clerk responsible in case that they are lost?

Mr. Carey: If Mr. Winter personally agrees that he will get them back here tomorrow morning by ten o'clock, that is all right with me.

Mr. Winter: I do agree.

The Court: And the Clerk is absolved between this time and tomorrow morning at ten o'clock for these exhibits marked now for identification—what are they marked?

Mr. Winter: Defendant's Exhibit A-1, A-2, A-3 and A-4.

The Court: Do you need A-1? That is already admitted. How about A-5, the so-called Fact Finding report?

Mr. Winter: No, your Honor, I do not need that, nor do I need Defendant's Exhibit A-1.

(Testimony of August Buschmann.)

Mr. Carey: With reference to A-5, that document has been marked for identification only and not offered yet, so I suppose that it is still his if he wants it.

The Court: Well, it will be in the Clerk's custody.

Mr. Carey: Well, I have no objection to whatever ones he wants to withdraw.

Mr. Winter: I would like to withdraw Defendant's [99] Exhibit A-2, A-3 and A-4.

The Court: Well, this agreement and stipulation covers Defendant's Exhibits A-2, A-3 and A-4. You may take them with you to your office until tomorrow morning at ten o'clock.

Mr. Carey: And in the meantime I will do the very best I can to get those contracts down from Bellingham, but I cannot give you any guarantee in regard to them.

The Court: Try to be in shape to proceed in the morning at ten o'clock, although we might have an interruption in the proceedings at that time. I cannot tell about these condemnation matters that are submitted to the Court.

At this time, court is adjourned.

(Whereupon, an adjournment was taken at four p.m. July 8, 1942, to 10:00 a.m. July 9, 1942.) [100]

10:00 o'clock a.m.

July 9, 1942

The trial was resumed, pursuant to adjournment.

(All parties present as heretofore noted.)

The Court: With reference to the case on trial, you may proceed.

Mr. Winter: Do you have something to say?

Mr. Carey: I do not know where we left off last night. I have now received from Bellingham a large number of files, and I wonder if counsel wants me to identify them now.

The Court: That is agreeable to the Court, if that is to both counsel.

Mr. Winter: Yes, it is to me.

Mr. Carey: I now tender for the inspection of counsel at any convenient time during the course of the trial, the following labor union contract of the Pacific American Fisheries for the years 1937, 1938 and 1939:

Company file No. 47, which is a contract dated July 19, 1938, with the International Machinists' Union, Bellingham Cannery,—

The Court: Would it be convenient for you to take them up according to the years, beginning with those in 1937?

Mr. Carey: I was reading them as the Comptroller listed them, and in some instances, he has indicated the year, and some he has not. We just got them here about ten minutes ago. [101]

Company file 90, which contains a contract dated

May 10, 1939, with the Carpenters & Joiners of America Union, Local No. 1184;

Company file 136, which contains a contract dated May 16, 1939, with the Marine Cooks & Stewards Association;

File 91, which apparently contains several contracts. I find one here dated May 28, 1938, and another one dated May 9, 1939.

These contracts in this file are with the American Radio Telegraphists' Association, and Local No. 6 of the American Communications Association and there may be other contracts in that file. I just notice hardly that there are those two.

File No. 92, this file contains several contracts. I see one for 1938, and another for 1939, and there may be others. These contracts in File 92 are with the International Association of Machinists of Seattle, Local 79 and Local 239.

File 100 contains 1937, 1938 and 1939 contracts with United Fishermen of Alaska, Kodiak Local, account of Alitak Cannery.

File 138 contains a contract dated May 27, 1938, with Alaska Cannery Workers' Union, Local 5, of San Francisco;

File 25 contains a contract relative to the year 1938 between Alaska Packers' Association and certain unions applicable to the Larson Bay and Chignik canneries. For the information of the Court, the reason that that appears in the Pacific American files is because the Alaska Packers and the Pa-

cific American Fisheries had a joint operation [102] there at that particular location in that year.

The Court: That was in the year 1938?

Mr. Carey: That apparently is 1938.

Company file 62 contains a contract dated May 27, 1938. There are two papers in here, both bearing the same date. Whether they are duplicate copies of the same contracts or not, I don't know, but at any rate, the contracts are agreements between the PAF and San Francisco Lodge No. 68 of the IAM for East Bay Union of Machinists, covering Southeastern Alaska and Bering Sea, Alaska. What all that means, I don't know.

File 57—1939 contains a contract with the Alaska Fishermen's Union for that year.

File 57—'38 contains a contract with the Alaska Fishermen's Union for that year, and File 57—1937 contains a contract with the Alaska Fishermen's Union for that year.

The Court: You have just mentioned three files No. 57.

Mr. Carey: Yes.

The Court: One for each of the three years?

Mr. Carey: Yes. That is apparently the way that they kept that particular contract.

File 101-1937. File 101 for the year 1937, which contains a contract with the Cannery Workers and Farm Laborers' Union for that year.

File 101-1. File 101-1 which contains a contract with the Cannery Workers and Farm Laborers' Union for the year 1939.

File 101, which contains a contract with the Cannery [103] Workers and Farm Laborers' Union for the year 1938.

File 36, which contains a contract with the Puget Sound Cannery Workers' Union, or Association, or whatever their proper name may be, for the year 1938.

Judging only from the name, your Honor, I assume that that applies only to Puget Sound, but probably to Alaska, too. Now, I don't know.

The Court: What class of work does it mention?

Mr. Carey: Well, it says, "Puget Sound Cannery Workers' Agreement". Judging from the name, they are cannery employees.

File 35 contains an agreement with the United Fishermen's Union, Puget Sound District, for the year 1938. [104]

The Court: May I suggest, for my convenience in making the ruling as to each one, after you have it identified, I wish you would call to my attention the place where you think that the language is pertinent.

Mr. Winter: Yes, Your Honor.

Mr. Carey: Are you going to continue with the contracts or with Mr. Buschmann's examination?

Mr. Winter: I will continue with Mr. Buschmann's examination.

AUGUST BUSCHMANN

recalled as a witness on behalf of Defendant, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Winter:

Q. Mr. Buschmann, when you were testifying yesterday, I think that you stated that the Fact Finding Board for the year 1938, on which you were the representative for the Employers, had under consideration the basic pay, and that you did not consider the board and lodging.

A. I believe I said that we had under consideration basic pay and overtime.

Q. You had under consideration basic pay and overtime?

A. Yes, sir.

Q. Why didn't you consider board and lodging?

A. Why didn't we consider board and lodging?

Q. Yes.

A. Because there wasn't any controversy over board and [105] lodging, because that had always been furnished.

Q. And it was furnished during the year 1937, the year before, which you were considering in arriving at the 1938 agreement?

A. Yes, sir.

Q. You had under consideration, I take it, the outside employees as distinguished from residents of Alaska, is that right?

A. Yes, sir.

Q. Now, isn't it a fact, Mr. Buschmann, that you, as representative of the employers, argued that in fixing the basic pay they must take into consid-

(Testimony of August Buschmann.)

eration the fact that the company was furnishing board and lodging under the contract?

A. Naturally, it has always been taken into consideration, I think, from the time that we first started packing salmon up there, that there is an expense in furnishing board and lodging, but I do not think that there was any particular stress laid on that during these negotiations.

Q. You do not think that there was an particular stress laid on that during these negotiations?

A. No, sir.

Q. But it has always been stressed by the industry, hasn't it, Mr. Buschmann?

Mr. Carey: I object to that. Counsel's statement is exactly contrary to what Mr. Buschmann says. It should not be overlooked that this is Mr. Winter's witness.

The Court: Try to avoid leading the witness, will you?

Mr. Winter: Yes.

Q. (Mr. Winter, continuing): Mr. Buschmann, by the way, you are [106] a director of the Pacific American Fisheries, aren't you? A. No, sir.

Q. You are of the other company——

A. Of the Alaska Pacific Salmon Company.

Q. Of the Alaska Pacific Salmon Company?

A. Yes, sir.

Q. Do you hold any other office in that corporation—executive office? A. No.

Q. You are a director at the present time?

A. Yes.

(Testimony of August Buschmann.)

Q. And you were in 1937, 1938 and 1939, were you?

A. Yes.

Q. Before that time, did you represent the corporation in negotiations with unions?

A. Not the corporation. We had a general committee, called the Labor Negotiating Committee, that I worked on for a number of years—for two or three years.

Q. But as I understand you, in arriving at the cash remuneration, of course, the furnishing of board and lodging must be taken into account. Now, why do you say that?

Mr. Carey: Just a minute. I object to that upon the ground that it is leading, and it is a misstatement of the witness' evidence, if he is referring to these 1938 negotiations.

The Court: I think that you should just state the objection. Mr. Carey objects to it on the ground that it is leading, and I think that that objection should be sustained. Avoid leading the witness.

[107]

Q. (Mr. Winter): Why do you say—if I understand you, why do you say that you must take into consideration board and lodging—I will strike that. Why must you take into account board and lodging in arriving at the basic pay?

Mr. Carey: I object to that on the ground that he made no such statement.

The Court: Objection sustained.

Q. (Mr. Winter): Well, did you take into con-

(Testimony of August Buschmann.)

sideration board and lodging in arriving at the basic pay?

Mr. Carey: I object to that upon the ground that it is repetition. He has already covered the subject.

The Court: Objection overruled.

A. Will you state the question again?

Q. (Mr. Winter): Did you take into account, or, rather, did the Fact Finding Board take into account board and lodging in arriving at the basic pay?

A. As I have stated before, the board and lodging did not come up during those negotiations, because it was not in controversy.

Q. Why wasn't it in controversy?

Mr. Carey: I object to that.

A. Because it has always been furnished.

Q. Because it has always been furnished?

A. Yes, sir.

Mr. Carey: I am objecting to it, about putting in controversy something over which there was no controversy.

The Court: Objection overruled.

Q. (Mr. Winter): Was it understood by the Board that board and lodging would continue to be furnished? [108]

Mr. Carey: I object to that as immaterial.

The Court: No, that objection is overruled. The objection as made is overruled.

A. Will you state that question again?

(Testimony of August Buschmann.)

The Court: Will you read the question, Mr. Reporter?

(Question read.)

A. Yes, sir; it was understood that it was to be continued.

Mr. Winter: I think that that is all.

Cross Examination

By Mr. Carey:

Q. Now, Mr. Buschmann, this board held its sessions during the summer of 1938, after the men had gone to Alaska to start their work?

A. Yes.

Q. That Board came into existence by reason of the fact that before the men went to Alaska in 1938, the operators contended that the marketing conditions with reference to the 1937 pack was such that the operators could not pay the same rate of compensation in 1938 as had been previously paid in 1937?

A. That is right.

Q. And the operators asked for a material reduction in the wages?

A. Yes.

Q. And the Unions countered by asking for a material increase in the wages?

A. Yes.

Q. And that was the situation that existed in the spring when the time had arrived that the operation had to start, [109] if there was going to be any operation at all?

A. That is true.

Q. And the Unions and the Operators attempted to arrive at a settlement by negotiation between themselves, and were not able to do so?

(Testimony of August Buschmann.)

A. That is right.

Q. And then, in order to permit the operation to go on, an arrangement was made that the men would go to Alaska on the terms offered by the Operators, subject, however, to such ruling as should afterwards be made by this Board? A. Yes.

Q. Now, the Board was created, or the Board consisted of three, one man representing the industry, and that was yourself? A. Yes.

Q. That is right, isn't it?

A. That is right, yes, sir.

Q. One man representing Labor, and that was Mr. Melnikow?

A. One man representing Labor, yes, and that was Mr. Melnikow.

Q. And then you were at a stalemate, so to speak, for a considerable time as to how to appoint the third man. Now, isn't it a fact that in an attempt to create a board of three who would investigate and make a decision, that it was finally agreed that Judge Garrecht of the Circuit Court of Appeals would name three men?

A. I think that that is correct.

Q. And Judge Garrecht named as possible candidates, Ben Kizer, of Spokane, Mr. Smith of San Francisco, and a third man whose name I do not remember. [110]

A. I do not remember it, either.

Q. And then having Judge Garrecht's nominees before you, you rejected one, and Mr. Melnikow rejected the other, and that left Mr. Smith, and

(Testimony of August Buschmann.)

he automatically became the third member of the Board? A. Yes, that is true.

Q. And then you held your sessions along in July or August of 1938? A. Yes.

Q. The operations then being in progress in Alaska? A. Yes.

Q. And finally made your award? A. Yes.

Q. The net result was that the increases asked by the Union were not granted. There were no increases over 1937 granted?

Mr. Winter: We will object to that, if the Court please, on the ground that the award is the best evidence. I make the same objection that has been made by counsel on a number of times.

Mr. Carey: All right, if counsel is willing to stand on that proposition, that was the one that I was making all day yesterday. He did not want—

The Court (Interrupting): The objection is overruled.

Q. (Mr. Carey): The net result was that while the operators were asking for a reduction under 1937 of approximately 25 per cent., the Board awarded about 5 per cent. in all districts except Southeastern Alaska, and about 7 per cent. in Southeastern Alaska? A. That is right. [111]

Q. And while you signed the agreement, or the award, in order to make it unanimous, you personally registered your objection to that?

A. I did.

Q. And on the other hand—I am sorry, but I do not seem to remember that other gentleman's

(Testimony of August Buschmann.)

name—Mr. Melnikow, he also signed the award, but on behalf of the Unions, he registered a protest, saying that individually he did not agree to it. That was the situation, was it not?

A. Yes, sir.

Q. Then the result was that Mr. Smith, the third man who was on the Board, by reason of Judge Garrecht's nomination, he became chairman, and he wrote the report, and you all signed it, isn't that right?

A. Yes, sir.

Q. And then when the men got back after the end of the season, a settlement was made upon the basis of this award?

A. That is right.

Q. Now, in considering this matter, the matter that was a matter of controversy between the operators and the Unions before the season started was the matter of how much cash wages should be paid?

A. Wages and overtime was the controversy.

Q. Well, overtime is wages, isn't it?

A. Yes.

Q. Paid in cash?

A. Yes.

Q. Isn't it a fact, Mr. Buschmann, that in the course of these negotiations, the matter of furnishing board and lodging was never a matter of controversy—never a matter of [112] controversy; that board and lodging always had been furnished, and you just took it for granted that it would continue to be furnished?

A. That is right.

(Testimony of August Buschmann.)

Q. That was not a matter of discussion or argument at all, was it?

A. No. We might have discussed it, but it was no matter of argument, and the agreements that were drawn up provided for it.

Q. There never was any controversy about that subject? A. No.

Mr. Carey: That is all.

Redirect Examination

By Mr. Winter:

Q. There have been controversies from time to time, have there not, as to, shall I say, the grade of food to be furnished?

A. Yes, there have been.

Q. Yes.

A. In years past. Naturally, the Unions would contend for better food as they went along.

Q. Yes.

A. Which, in most cases, was granted.

Q. And also better lodging and better accommodations? A. Yes, sir.

Q. And furnishing other things in addition to food and lodging? A. Yes.

Q. Is that right? A. Yes, sir. [113]

Q. Now, Mr. Buschmann, I think that you have been connected with the salmon canning industry for a good many years? A. Yes.

Q. For how many years, would you say?

A. Oh, about 45 years.

Q. Are you familiar with the base upon which liability insurance is computed?

Mr. Carey: I object to that as immaterial.

(Testimony of August Buschmann.)

Q. (Continuing) Particularly with your companies.

The Court: Sustained.

Mr. Winter: I would like to ask this as direct examination, if your Honor please, because I forgot to ask this before, if your Honor please.

The Court: Then you wish to open your direct examination?

Mr. Winter: Yes, I would like to do so.

The Court: That will be permitted, and I will allow you, Mr. Carey, the opportunity to cross examine. Objection is overruled. The witness may answer the question.

Mr. Winter: I will reframe my question, and amplify it somewhat.

Q. (Mr. Winter, continuing) I will ask your whether or not the reasonable value of board and lodging is included in the amount of wages and salary, where you are computing the premium to be paid for liability insurance?

Mr. Carey: I object to that as immaterial. The question as to what may happen between a particular operator and some particular insurance company as a matter of contract [114] between them is one thing. What is proper as a matter of law is an entirely different thing.

The Court: Unless the question is confined to these two plaintiffs, the objection will be sustained.

Mr. Winter: Well, I will confine it to either the Pacific American Fisheries or the Alaska Pacific Salmon Company.

(Testimony of August Buschmann.)

Mr. Carey: So far as the Pacific American Fisheries is concerned, there is no evidence that this witness has any connection, or ever did have any official connection with the Pacific American Fisheries, or that he has any knowledge on the subject.

Mr. Winter: Well, I will limit it to his company, then.

Q. (Mr. Winter) Well, just limit it to your company, Mr. Buschmann.

Mr. Carey: As yet, there is no evidence that even as to the Alaska Pacific Salmon Company he has any knowledge on the subject.

The Court: Will you read the question, Mr. Reporter?

(Question read.)

The Court: If you know the answer to that question, you may give it.

A. You mean as regards the Alaska Pacific Salmon Company?

Q. (Mr. Winter) Yes.

A. I know nothing about that, as regards to the Alaska Pacific Salmon Company.

Q. Well, with regard to the other company, the Pacific American Fisheries?

A. I know nothing with reference to the other company, either. [115]

Q. You know nothing in that regard with respect to either company? A. No, I do not.

Mr. Winter: That is all.

Mr. Carey: That is all.

(Witness excused.)

WILLIAM HECKER

called as a witness on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Winter:

Q. Will you state your name?

A. William Hecker.

Q. Where do you reside?

A. 903 Union Street, Seattle.

Q. Are you, or were you connected with the Alaska Fishermen's Union during the years 1937, 1938 or 1939?

A. I have been the Business Agent of the Alaska Fishermen's Union since April of 1938.

Mr. Carey: Since April of 1938?

The Witness: Since April of 1938, yes, sir.

Q. (Mr. Winter) Were you connected with the Alaska Fishermen's Union prior to that time?

A. Just as a member.

Q. Just as a member? A. Yes, sir. [116]

Q. How long have you been a member of the Alaska Fishermen's Union? A. Since 1922.

Q. Are you familiar with the—I will strike that.

The Court: Have you conducted any other business around town here?

The Witness: Not in Seattle. I used to be a seaman. I used to sail as an officer and master of ships.

Q. (Mr. Winter) As business agent for the Alaska Fishermen's Union, did you take part in

(Testimony of William Hecker.)

negotiations looking forward to the execution of contracts with canneries in Alaska?

A. Negotiations were carried on by a committee, and I was a chairman of the committee on behalf of the Union.

Q. Did you sign the contracts for 1938 and 1939?

A. Yes.

Q. With the Alaska Pacific Salmon Company?

A. Yes.

Q. And also with the Pacific American Fisheries? A. Yes, sir.

Q. I will ask you whether or not you, as business agent, or as representative, or as bargaining agent—you are the bargaining agent for the employees, aren't you——

A. (Interrupting) Yes, sir.

Q. (Continuing) ——considered board and lodging as a part of the wages to be paid under those union contracts?

Mr. Carey: Just a minute. I object to that as immaterial. The negotiations, of course, were merged in the written agreements, and they are the best evidence. If counsel has them, they will be offered in evidence, if they are material. It is not proper to undertake to ask the [117] witness about the meaning of a contract which is not yet in evidence, even if it might be proper afterwards.

The Court: Read the question.

(Question read.)

The Court: Objection sustained.

(Testimony of William Hecker.)

Q. (Mr. Winter) During negotiations with the Alaska Pacific Salmon Company and the Pacific American Fisheries, or their representatives, was the matter of board and lodging discussed between you as representing the Union——

A. (Interrupting) The negotiations were——

Mr. Carey: (Interrupting) Just a minute. That is objected to for the reason that the negotiations were merged in the written contracts, which are the best evidence.

And it is incompetent to examine any witness about the negotiations of any particular contract—— at least prior to the time that the contract is offered in evidence.

The Court: My offhand opinion is that Mr. Carey's objection is tenable and sound. I will hear you, however, if you have any authority which you think permits the question.

Mr. Winter: If the Court please, this is my thought in the matter, Counsel says and the witnesses say that it was either a verbal understanding or it was merged in the written contract. Now, the contract may be ambiguous in that respect, and I am just trying——

The Court: (Interrupting) I am having more trouble with your question, as to whether or not it may be ambiguous. If the purpose of the question is to bring before the Court by oral testimony the contents of the discussion, or the terms of the discussion, I think that the objection [118] should be sustained. If all that is asked for is merely whether

(Testimony of William Hecker.)

or not a discussion took place, that might be another thing.

An answer to the question which would be admissible would be "yes" or "no".

Mr. Winter: I will withdraw the question.

The Court: Just wait a minute. Let us see. Read the question.

(Question read.)

Mr. Winter: I would like to reframe the question.

The Court: You may do so.

Q. (Mr. Winter) During your negotiations looking forward to the execution of agreements with the Plaintiffs here, was the matter of board and lodging discussion between you and the representatives of the companies?

The Court: The answer to that question will be "yes" or "no".

A. Yes.

Q. (Mr. Winter) It was discussed?

A. Yes.

Q. Would you say that that was discussed many times?

Mr. Carey: I object to that as leading.

The Court: The objection is sustained.

Q. (Mr. Winter) Over what period of time did your negotiations take?

Mr. Carey: That is objected to as immaterial. Negotiations, whether long or short, if they resulted in a contract, it is the contract then that is involved, and that would be immaterial.

(Testimony of William Hecker.)

The Court: The objection is overruled. He may state. [119]

A. Negotiations were carried on over several months—probably three or four months.

Q. (Mr. Winter, continuing) What is the fact as to whether or not that matter was discussed on numerous occasions or on just a few occasions?

A. On numerous occasions.

Q. And did you fix a value as between yourselves on the matter of board and room?

Mr. Carey: I object to that as immaterial, for the reasons previously stated. Now, that is going into what ultimately went into the contract, and the contract is the best evidence.

The Court: I will have to sustain this objection and it is the order of the Court that it will be sustained.

Q. (Mr. Winter, continuing) Do you know of your own knowledge whether or not board and room have been furnished to fishermen?

A. They always have. It is furnished to some, and there are some that it is not furnished to. There are different classifications of fishermen in Alaska.

Q. Yes.

A. And some of them do not get their board, but they get more money for the fish.

Q. Yes.

A. And more money for their labor.

Q. I see. Were you fishing, or were you employed in Alaska working for either one of these companies during 1937?

(Testimony of William Hecker.)

A. No. I was fishing for the Alaska Packers' Association out of San Francisco.

Q. Out of San Francisco?

A. Yes. [120] I was fishing in the Bristol Bay District.

Q. Are you familiar with the board and room, or the provisions for board and room that were furnished to the employees of the Alaska Pacific Salmon Company and the Pacific American Fisheries Company during either 1937, 1938 or 1939?

A. Just what do you mean by that? The kind of board that they got?

Q. What is that?

A. What do you mean, the quality of the board?

Q. Yes.

A. Well, I think that the quality of the board runs about the same for every company in the various districts—I mean, that they feed them all alike.

Mr. Carey: I do not think that that is in issue in this case, your Honor. Even if the meals were not good last year, I do not know what the Court can do about it.

Mr. Winter: That is all.

Mr. Carey: That is all.

(Witness excused.) [121]

The Court: You may proceed.

Mr. Winter: We will call Mr. Espe.

CONRAD ESPE,

called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Winter:

Q. Will you state your name, please?

A. Conrad Espe.

Q. Where do you reside, Mr. Espe?

A. 820 North 60th, Seattle.

Q. What is your occupation?

A. I am International Vice-President of the United Cannery, Agricultural, Packing and Allied Workers of America, and Business Agent of its Local Branch No. 7.

Q. You are the Business Agent of what branch?

A. Branch No. 7 here in Seattle.

Q. How long have you occupied that position?

A. As Business Agent I occupied in 1936 and in 1937, and I occupied it in 1940, '41 and '42.

Q. Have you had occasion, or what has been your experience with respect to collective bargaining agreements? Have you had considerable experience along that line?

A. I have been the Chairman of the Collective Bargaining Committee for the Cannery Workers for the whole Coast that worked in Alaska since 1936.

Q. And I take it that you personally have been negotiating [122] for these Union contracts during that period of time?

(Testimony of Conrad Espe.)

A. From 1936 up to the present date.

Q. Are you familiar with what contracts or, rather, are you familiar with all the contracts in your Union which were executed in 1937?

A. I am.

Q. Will you state to the Court how the contracts are negotiated?

Mr. Carey: I object to that.

Q. (By Mr. Winter) How does the Union negotiate contracts with the industry?

Mr. Carey: That is objected to.

Mr. Winter: That is purely preliminary, if Your Honor please.

Mr. Carey: I object to that as immaterial. I make the same objection that I made when Mr. Hecker was on the stand.

The Court: It is not necessary to take up the time on that. I think I will sustain the objection. You should get right at the pertinent inquiry.

Q. (By Mr. Winter) How are the contracts negotiated?

Mr. Carey: That is the same question, and I object on the same ground.

The Court: Objection sustained.

Q. (By Winter) Is the price paid for labor the same to a resident of Alaska as it is to a non-resident, for example on ships or boats? [123]

Mr. Carey: I object to that. The contract is the best evidence. The objection is that it is immaterial to any issue in this case.

(Testimony of Conrad Espe.)

The Court: Objection overruled. The answer to that question should be yes or no.

Q. (By Mr. Winter) Is there a difference?

A. Yes, there is.

Q. What is the difference, Mr. Espe?

Mr. Carey: That is objected to upon the ground that it is already shown that these arrangements are in the form of written contracts, and the contracts are the best evidence.

The Court: I think that that objection will have to be sustained.

Q. (By Mr. Winter) Well, I will ask you, Mr. Espe, is the furnishing of board and lodging given any consideration in fixing the terms of employment?

A. Yes.

Mr. Carey: I move to strike the answer because it was made before I had a chance to make an objection.

The Court: The motion and the objection will be considered together.

Mr. Carey: All right. I object upon the ground that the contract is the best evidence.

The Court: Read the question.

(Question read by the reporter.)

Mr. Carey: The negotiations are, of course, merged in the written contract, and the contract is [124] the best evidence.

The Court: That objection is sustained.

Q. (By Mr. Winter) That is your Union uses the same form of contract with every cannery in Alaska, or did it in 1937?

A. Yes.

(Testimony of Conrad Espe.)

Q. Was there any difference between the contracts that were executed with the Alaska Pacific Salmon Company than there were with the contracts that were executed with the Pacific American Fisheries?

Mr. Carey: I object to that as immaterial. The contracts, if material, are the best evidence to show whether they are alike or unlike.

Mr. Winter: If the Court please, counsel stated himself that these are the only contracts which are in existence, and we want to know whether they are the same contracts with both corporations, which the evidence will show, we think, that they are, and when we get all these contracts in there will be some in some years with one company and some in other years with another company. I want to know if the same form was used.

The Court: You are inquiring with special reference to these two companies?

Mr. Winter: Yes.

The Court: Contracts which are not available?

Mr. Winter: Yes, your Honor.

Mr. Carey: Well, I do not know the purpose of the inquiry. If the purpose of the inquiry is to suggest [125] to the Court that there are contracts that we have not produced here, all I have to say is that I have produced all that I could get, and it is not my fault that counsel did not make a timely request for them. We have produced all that we were told were available. Now, if he will tell me

(Testimony of Conrad Espe.)

that there is some contract that is not here, I will ascertain whether there is such a contract.

The Court: Objection sustained. You may advise counsel as to further contracts you wish him to produce, and then after that the Court will consider again your propounding this question, if you wish to propound this question after that subject is gone into.

Mr. Winter: Well, we will make a demand at this time, if the Court please, for counsel to produce all written contracts that they had with Labor in the canneries during the years 1937, 1938 and 1939. We do not have them. Counsel's own statement was that they are not available, and that they have produced the only set of contracts that were available. That was his statement yesterday. Now, if there are any others, we would like to have them. We do not want it argued later on that they may not have had contracts with some other parties.

The Court: Did he say that with reference to these two Plaintiffs, or with reference to other employers? Does your present inquiry and demand relate to any contract between other employers and their employees, or do they relate only to these two Plaintiffs and their employees? [126]

Mr. Winter: To these two Plaintiffs and their employees. Mr. Carey said that these were all the contracts which were available—that it was the complete set—all that he had, and we want produced all written contracts had by these two Plaintiffs with

(Testimony of Conrad Espe.)

Labor in the canneries during the years 1937, 1938 and 1939.

The Court: I understood in response to that request that he produced all these contracts, all that he could find as to these two Plaintiff employers for the years 1937, 1938 and 1939. Did I understand you correctly, Mr. Carey?

Mr. Carey: Yes.

The Court: What contract are you inquiring about in this question that you last propounded to the witness?

Mr. Winter: Well, I have no particular contract in mind, but there may appear, for example, as I pointed out to Your Honor that we have numbered these exhibits in accordance with the——

The Court: (Interruptnig) If you wish me to consider the question as renewed now and if counsel for the Plaintiffs wishes me to consider his **objection** to the question as renewed, the Court will rule on it.

Mr. Winter: Yes, Your Honor.

Mr. Carey: I may misunderstand what counsel is driving at. If he is making a demand on me for the production of any contracts in addition to those that I have already furnished him for his inspection, all I can say is that I haven't any more, because I have given him everything that I can get hold of. [127]

The Court: That situation has been already passed. Since you have again reminded the Court, and all has been said or done, he then wishes to repeat to the witness the question as to the similarity

(Testimony of Conrad Espe.)

of the contracts. Do you wish to have the question read?

Mr. Carey: No. I have it in mind, and I object to it.

The Court: Objection sustained.

Q. (By Mr. Winter) Mr. Espe, who prepared the contracts which your Union had with the Alaska Pacific Salmon Company and the Pacific American Fisheries, Inc.?

Mr. Carey: That is objected to as immaterial, who may have prepared them. It doesn't make an difference who prepared them. When finally executed those are the contracts.

The Court: What do you seek to show by this, and what foundation are you laying, if any?

Mr. Winter: I am laying the foundation to show that the same form was used with both companies, and if it later appears that a contract is missing, it won't be charged that we did not produce it or that we did not ask them to produce it or have demand made upon them for it.

The Court: I do not believe that that will be of any help to anyone of you in this court. [128]

STIPULATION OF COUNSEL RE LABOR
CONTRACTS OFFERED AND ADMITTED
AS EXHIBITS

The files of the plaintiffs, Pacific American Fisheries, Inc. and Alaska Pacific Salmon Company ten-

dered to counsel for defendant for inspection as shown above were given appropriate exhibit numbers and offered and admitted in evidence except as noted below. Said contracts are numerous and voluminous, contain provisions covering many subjects not material, and it is agreed that the provisions of said contracts insofar as material are as follows:

1. Exhibit A-1 is a contract between Pacific American Fisheries, Inc., and Alaska Fisheremans Union, covering seamen, fishermen and others employed at Nornak, in the year 1939, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

“There shall be regular meal hours posted on vessel or cannery, such meal hours shall be observed and for all work done during meal hours extra compensation shall be paid at the rate of One Dollar per hour. This rule also applies for the meal to be served at midnight as hereinafter provided. Men required to work before and after midnight shall receive a hot lunch. Above section applies to men working only.”

2. Exhibit A-2 is a file containing seven 1937 contracts between Alaska Pacific Salmon Company and various unions:

(1) Is a contract between Alaska Pacific Salmon Company and Alaska Fishermens Union, covering tendermen, trapmen, mess house employees and others in southeastern Alaska canneries, and among other general and

specific provisions for the furnishing of lodging and subsistence, in addition to [129] provisions for cash remuneration to be paid by the employer to its employees, it provides:

“Fresh meat, fruits and vegetables shall be furnished whenever obtainable.

* * * *

“Men arriving from Alaska on Company vessel at a port of destination other than Seattle or Bellingham shall receive at that destination in addition to their agreed pay, transportation to Seattle or Bellingham and \$3.00 per day for maintenance while waiting for transportation. Transportation and maintenance shall not be required to be furnished to men who have shipped in the same United States Custom District as the port of destination.

* * * *

“The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular meal hours, the mess house crew shall prepare same without overtime. If, at midnight any cook is required by the Superintendent, foreman of Captain in charge to prepare and serve an additional full hot meal for members of the crew working at night, he shall receive three hours' overtime.”

(2) Is a contract between Alaska Pacific Salmon Company and Cannery Workers and Farm

Laborers Union, Local 18257, Seattle, Washington. and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

“Sufficient food of a diversified character shall be furnished, and wholesome meals of good quality and sufficient quantity shall be available at all meals.

* * * *

“In canneries and on vessels, each bed shall consist of spring mattress, pillow and cover two white sheets, and sufficient blankets to be furnished by the company, upon the request of the members.

“Mosquito netting shall be furnished where required, and screens for doors and windows.

[130]

“Linens to be changed weekly, and laundered by the Company.

“Bunk houses shall be apart from mess room, wherever practical.

“Bunk houses, to best serve their particular use, shall be made as sound proof as possible, to ensure a sound sleep for men.

“Good lighting facilities shall be made available wherever needed, for reading, writing, and recreational purposes, and all wires encased in conduit.”

* * * *

(3) Is a contract between Alaska Pacific Salmon Company and Copper River and Prince Will-

iam Sound Fishermens Union, covering tendermen, trapmen and mess house employees and others employed in Prince William Sound canneries, and in form is identical with (1).

(4) Is a contract between Alaska Pacific Salmon Company and American Radio Telegraphists Association, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provision for cash remuneration to be paid by the employer to its employees, it provides:

“In addition to salary the company agrees to furnish suitable and habitable living quarters and wholesome meals of good quality and sufficient quantity to each radio operator employed by the company.”

(5) Is a contract between Alaska Pacific Salmon Company and Copper River and Prince William Sound Fishermens Union, covering fishermen employed in that district, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides: [131]

“The first party (the company) agrees to furnish free to men using company boats, oil, gas, fuel and fishnets, and in addition will furnish food up to the value of \$45.00 per man for the season on the Copper River Delts. All food used in excess of \$45.00 per man shall be charged to and deducted from their respective accounts.”

“In the event party of the second part is used as a common laborer around the plant prior to and after the fishing season, he shall receive wages at the rate of \$90.00 per month and board for time worked.”

(6) Is a contract between Alaska Pacific Salmon Company and United Brotherhood of Carpenters and Joiners of America, Local 1184, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

“The rate of pay based on the above hours shall be One Hundred and Seventy Dollars (\$170.00) per month, with board, lodging and transportation furnished in addition.”

(7) Is a contract between Alaska Pacific Salmon Company and Alaska Fishermens Union, covering tendermen, fishermen and others employed in the Westward Canneries. So far as material, this contract is substantially identical with (1).

3. Exhibit A-3 is a file containing six contracts between Alaska Pacific Salmon Company and various unions, covering the year 1938:

(1) Is a contract between Alaska Pacific Salmon Company and Alaska Fishermens Union, covering tendermen, trapmen and others employed in southeastern Alaska, and so far as material, this contract is substantially identical to Exhibit A-2 (1).

(2) Is a contract between Alaska Pacific [132] Salmon Company and Cannery Workers and Farm Laborers Union, Local No. 7, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

“* * * The Company shall also furnish employee free transportation of third class, from port of embarkation to the cannery and return; except as herein otherwise provided; three wholesome and adequate meals each day during transportation and while at the cannery; also suitable living quarters while at the cannery and bunk, spring and mattress, * * *”

(3) Not admitted in evidence.

(4) Is a contract between Alaska Pacific Salmon Company and American Radio Telegraphists Association, and so far as material, this contract is substantially identical with Exhibit A-2 (4).

(5) Not admitted in evidence.

(6) Is a contract between Alaska Pacific Salmon Company and Seattle District Counsel of Carpenters, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

“The rate of pay based on above hours shall

be \$150.00 per month with board, lodging and transportation furnished in addition."

(7) Is a contract between Alaska Pacific Salmon Company and Alaska Fishermens Union, covering tendermen, trapmen, mess house employees and others, and so far as material, this contract is substantially identical with Exhibit A-2 (1). [133]

(8) Is a contract between Alaska Pacific Salmon Company and Machinists Local No. 79 and No. 239 of the International Association of Machinists, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

"One hour shall be allowed for all regular meals except during the height of the canning season. The limits of meal hours shall be:

Breakfast	6 to 8 A.M.,
Dinner	11 A.M. to 1 P.M.,
Supper	5 to 7 P.M.,

except where mutually agreed. Men at the cannery required to work until midnight shall receive hot coffee and lunch. Men who continue to work after midnight shall receive a hot meal at the mess house."

4. Exhibit A-4 is a file containing six 1939 contracts between Alaska Pacific Salmon Company and various unions:

(1) Is a contract between Alaska Pacific Salmon Company and Alaska Fishermens Union, covering tendermen, trapmen and others employed in southeastern Alaska, and is substantially identical with the corresponding contract for the two preceding years.

(2) Is a contract between Alaska Pacific Salmon Company and United Cannery Agricultural Packing and Allied Workers of America, and so far as material, this contract is substantially identical with Exhibit A-3 (2).

(3) Not admitted in evidence.

(4) Is a contract between Alaska Pacific Salmon Company and American Communications Association, and so far as material, this contract [134] is substantially identical with the contracts in the two preceding years.

(5) Not admitted in evidence.

(6) Is a contract between Alaska Pacific Salmon Company and Seattle District Council of Carpenters, and so far as material, this contract is substantially identical with Exhibit A-3 (6).

(7) Is a contract between Alaska Pacific Salmon Company and Alaska Fishermens Union, covering tendermen, trapmen, mess house employees and others employed in the Westward Cannery, and so far as is material,

this contract is substantially identical with the contracts covering the preceding years.

(8) Is a contract between Alaska Pacific Salmon Company and Machinists Local 79 of International Association of Machinists, and among other general and specific provisions for the furnishing of lodging and subsistence, in addition to provisions for cash remuneration to be paid by the employer to its employees, it provides:

“During the operation of the cannery, provision shall be made to keep the general crew quarters ashore clean, make fires when necessary and to keep said quarters in a sanitary condition.

* * * *

“One hour shall be allowed for all meals except during the height of the canning season.”

5. Exhibit A-5 was not admitted in evidence.

6. Exhibit A-6 is a blank 1937 form of contract of the Cannery Workers and Farm Laborers Union, Local 18257, being the same form as Exhibit A-2 (2).

7. Exhibit A-7 is a file containing five 1937 contracts between Pacific American Fisheries, Inc., and Alaska Fishermens Union, covering operations at Alitak, Petersburg, [135] Chignik, Karluk, Kasaan, King Cove, and Bristol Bay canneries, Naknek, Nushagak and Nornek, and also Shumagin, which form of contracts, insofar as material, are identical with Exhibit A-2 (1).

(6) Is a contract between Alaska Fishermens Union and Western Pacific Packing Company, covering seamen, fishermen and others for the year 1937.

8. Exhibit A-8 was not admitted in evidence.

9. Exhibit A-9 is a file containing 1939 contracts between the Pacific American Fisheries and Seattle District Counsel of Carpenters, Local 1184, being identical in form with Exhibit A-2 (6); a contract between Pacific American Fisheries and American Communications Association, being identical in form with Exhibit A-4 (4), and a contract between Pacific American Fisheries, Inc., and Seattle District Counsel of Carpenters, being identical in form with Exhibit A-4 (7).

10. Exhibit A-10 contains 1938 contract between Pacific American Fisheries and Marine Cooks etc.; also 1937 contract with same union. This file is not material because these contracts relate not to cannery employees, but to crews of company vessels.

11. Exhibit A-11 is a file containing 1938 contracts between Pacific American Fisheries and American Radio Telegraphists Association, and a 1939 contract between Pacific American Fisheries and American Communications Association, and insofar as material, these contracts are identical in form with contracts between the same Unions and Alaska Pacific Salmon Company for the same years, being Exhibits A-3 (4) and A-4 (4).

12. Exhibit A-12 is a file containing 1938 Ali-tak contract between Pacific American Fisheries

and Cannery [136] Workers and Farm Laborers Union (duplicate copies); also Naknek 1938 contract between Pacific American Fisheries and Cannery Workers and Farm Laborers Union, Local 226; also 1938 Nornek contract between Pacific American Fisheries and Cannery Workers and Farm Laborers Union, Local No. 7 (duplicate copies); also contract in the same form covering Shumagin Cannery, and insofar as material, these contracts are identical with similar contracts between the Alaska Pacific Salmon Company and the same Unions.

13. Exhibit A-13 is a file containing a 1938 contract between Pacific American Fisheries and Alaska Cannery Workers Union, Local 5, San Francisco, covering operations at Karluk and Chignik, and insofar as material, the contract is identical to corresponding contract with the Alaska Pacific Salmon Company.

14. Exhibit A-14 is a file containing 1938 contracts between Pacific American Fisheries and Alaska Fishermens Union, covering operations at Chignik, Karluk, King Cove, Nornek, Naknek, Petersburg and Shumagin, also Alitak, and insofar as material, these contracts are identical with corresponding contracts for prior year and/or with Alaska Pacific Salmon Company.

15. Exhibit A-15 is a file containing 1938 and 1939 contracts between Pacific American Fisheries and International Association of Machinists, Local 79, and insofar as material, these contracts are

identical with the contracts between that Union and the Alaska Pacific Salmon Company.

16. Exhibit A-16 is a file containing a 1938 contract between Pacific American Fisheries and International Association of Machinists, Local No. 68, and insofar as material, this contract is identical with the similar contract between Alaska Pacific Canning Company and the International Association of Machinists. [137]

17. Exhibit A-17 is a file containing 1939 contracts between Pacific American Fisheries and Alaska Fishermens Union, covering operations at Alitak, King Cove, Naknek, Nornek, Shumagin, Port Moller and Nushagek, and insofar as material, these contracts are identical with similar contracts in previous years and between the Alaska Pacific Salmon Company and that Union.

18. Exhibit A-18 is a file containing 1939 contract between Pacific American Fisheries and Cannery Workers and Farm Laborers Union No. 7, covering operations at Alitak, also Port Moller, also Shumagin, and insofar as material, the contract is identical to similar contract in prior years and between the Alaska Pacific Salmon Company and that Union.

KERR, McCORD AND CAREY
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lant.

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nal Revenue

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[Endorsed]: Filed Mar. 23, 1943. [138]

[Endorsed]: No. 10395. United States Circuit Court of Appeals for the Ninth Circuit. Pacific American Fisheries, Inc., a corporation, Appellant, vs. United States of America, Appellee, and Alaska Pacific Salmon Company, a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Western District of Washington, Northern Division.

Filed: March 29, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10395

PACIFIC AMERICAN FISHERIES, INC.,
Plaintiff and Appellant,

vs.

UNITED STATES OF AMERICA
Defendant and Appellee.

No. 10395

ALASKA PACIFIC SALMON CO.,
Plaintiff and Appellant,

vs.

UNITED STATES OF AMERICA
Defendant and Appellee.

DESIGNATION UNDER RULE 19-6

To the Clerk of the Above Entitled Court:—

Pursuant to Rule 19-6, the appellants state that the point upon which they intend to rely on their appeal from the judgment of the United States District Court for the Western District of Washington, Northern Division is that the proof made on the trial does not support the findings, conclusions and judgment entered in said causes 396 and 397 as numbered

in the Court below, but on the contrary the admissions in the pleadings and the proof require judgments in favor of the plaintiffs as prayed for in their respective complaints.

The appellants therefore designate for printing the entire record as certified and transmitted by the Clerk of said District Court.

KERR, McCORD AND CAREY
STEPHEN V. CAREY

Attorneys for Pacific American
Fisheries, Inc. and
Alaska Pacific Salmon Co.,
Appellants.

Service of the foregoing designation by receipt of copy thereof admitted this 26th day of March, 1943.

U. S. District Attorney
Attorneys for Defendant and
Appellee

Copy received this 26th day of March, 1943.

THOMAS R. WINTER
M.O.

[Endorsed]: Filed Mar. 29, 1943. Paul P.
O'Brien, Clerk.

